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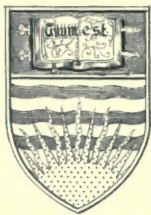


# ALBERTA RULES OF COURT 1914

AMENDED TO SEPTEMBER 1, 1923  
SUPPLEMENTED BY AN

APPENDIX





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# THE ALBERTA RULES OF COURT

1914

AMENDED TO SEPTEMBER 1ST, 1923  
SUPPLEMENTED BY AN  
APPENDIX

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# THE ALBERTA RULES of COURT

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APPENDIX



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# ALBERTA RULES of COURT

## 1914

Amended to September 1st, 1923.

(The references at the end of the Rules are to the English Annual Practice, 1913, and to the Ontario Rules, 1897.)

### DEFINITIONS AND INTRODUCTORY MATTER.

1. The following Rules may be cited as "The Consolidated Rules of the Supreme Court" or briefly "C. R." They shall come into operation on the first day of September, 1914, and shall apply so far as may be practicable, unless otherwise specially provided, to all proceedings taken on or after that day in all actions and other proceedings then pending.

Citation  
of rules

2. These Rules are not intended to affect the practice or procedure in criminal matters.

Rules not to  
affect criminal  
matters

(2) *The Interpretation Act, The Supreme Court Act, and The District Courts Act* shall apply to these Rules.

Statutes  
to apply

3. As to all matters not provided for in these Rules the practice as far as may be shall be regulated by analogy thereto. [O. 3.]

Matters not  
provided for to  
be regulated  
by analogy

4. The division of these Rules into headings and the addition of marginal notes is for convenience only and is not intended to affect their construction. [O. 7.]

Headings  
and notes  
not to affect  
construction

5. Every Rule hereafter made shall be construed as intended to come into force on the fifteenth day after the date of *The Alberta Gazette* in which it shall first be published unless the Rule shall otherwise direct. [O. 8.]

Date of  
coming into  
operation of  
future rules

6. In the construction of these Rules, unless there is anything in the subject or context repugnant thereto or inconsistent therewith, the several words hereinafter mentioned shall have or include the meanings following, that is to say—

Definitions

(a) "Rules" shall include forms;

(b) "Clerk" means the clerk, deputy clerk or acting clerk of the judicial district in which the action or other proceeding is pending or is about to be commenced and, where the context requires it, a process issuer;

(c) "Address for service" means an office or other place of business, not being more than three miles from the office of the clerk of the district in which the action or other proceeding in which the address for service is required to be given was commenced;

(d) "Action shall include any issue directed to be tried;

(e) "A liquidated demand" means a claim for a specific sum payable under an express or implied contract for the payment of a sum of money not being in the nature of a penalty or unliquidated damages, the amount whereof is fixed by the terms of the contract or can be ascertained by calculation only or upon the taking of an account between the plaintiff and the defendant; or a claim for a specific sum of money, whether or not in the nature of a penalty or damages recoverable under a statute which contains an express provision that the sum sued for may be recovered as a liquidated demand or as liquidated damages;

(f) A "statement of claim" is the pleading by which the plaintiff commences his action;

(g) A "statement of defence" is the pleading by which the defendant answers the plaintiff's statement of claim;

(h) A "counterclaim" is the pleading by which the defendant makes against the plaintiff or against the plaintiff and others such a claim as he might have made by a statement of claim in an independent action. If there be a statement of defence, the counterclaim shall be conjoined and pleaded with the statement of defence;

(i) A "reply" is the statement by which the plaintiff answers the defendant's statement of defence;

(j) A "defence to counterclaim" is the pleading by which the plaintiff answers the defendant's counterclaim. If there be a reply to the statement of defence, the defence to the counterclaim shall be conjoined and pleaded with the reply to the statement of defence;

(k) A "reply to the defence to counterclaim" is the pleading by which the defendant answers the plaintiff's defence to the counterclaim;

(l) A "joinder of issue" is a pleading by which a party joins issue upon the previous pleading of an opposite party without more.

No pleadings  
subsequent  
to joinder  
of issue  
without leave

7. No pleading other than a joinder of issue subsequent to reply or reply to defence to counterclaim may be pleaded except by leave of a judge. [E. 277; O. 257.]

Judge in chambers  
may dispose of  
matters other  
than trials

8. Except as otherwise provided all motions, applications and hearings other than the trials of actions may be disposed of by a judge in chambers. [480.]

Variation  
or discharge  
of orders

9. Any order made *ex parte* may be varied or discharged by any judge on notice and every order made by a judge may be varied or discharged upon notice by the same judge. [E. J. A. 50.]



**10.** Where any application ought to be made to or any jurisdiction exercised by the judge by whom a cause or matter has been tried or before whom any motion has been made, if such judge shall die or cease to be a judge of the court or if for any other reason it shall be impossible or inconvenient that such judge should act in the matter, any other judge may hear such application or otherwise exercise such jurisdiction. [514; E. 885.]

Procedure on death or cesser of office by judge

JOINDER OF CAUSES OF ACTION AND PARTIES.

**11.** Subject to the following Rules relating to the joinder of causes of action, the plaintiff may unite in the same action several causes of action. [79 pt.; E. 188; O. 232; M. 257.]

All causes of action may be joined

**12.** Claims by an assignee for the benefit of creditors as such shall not, unless by leave of a judge, be joined with any claim by him in any other capacity. [E. 190; O. 233; M. 259.]

Claims by assignee for creditors

**13.** Claims by or against husband and wife may be joined with claims by or against either of them separately. [E. 191; O. 234; M. 260.]

By or against husband and wife

**14.** Claims by or against an executor or administrator as such may be joined with claims by or against him personally; provided the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator. [E. 192; O. 235; M. 261.]

Personal representative

**15.** Claims by one or more plaintiffs against one or more defendants in respect of or arising out of the same transaction or occurrence or out of the same series of transactions or occurrences may be joined in the same action whether the plaintiff's claim to be entitled to relief jointly or separately, or in the alternative, and whether the defendants are sought to be charged jointly or separately or in the alternative, and whether or not the relief or remedy sought against the several defendants be the same. [E. 188.]

Joinder of claims arising from same or similar transactions

**16.** If it be made to appear to a judge that several causes of action joined in the same action have been improperly joined or cannot all be conveniently disposed of in one action, the judge may either order any of such causes of action to be excluded or may direct the issues raised by any of the causes of action to be tried separately and in either case may direct the pleadings to be amended accordingly and may make such order as to costs as may be just. [79 pt.; E. 188, 195, 196; O. 237; M. 263.]

Remedy for misjoinder

JOINDER OF PLAINTIFFS.

**17.** Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it

Wrong plaintiff

has been commenced in the name of the right plaintiff, a judge may, if satisfied that it has been so commenced through a *bona fide* mistake, either of fact or law, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just. [27; E. 124; O. 313.]

Misjoinder  
of plaintiff  
counterclaim

**18.** Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counterclaim, he may obtain the benefit thereof by establishing his counterclaim against the parties other than the co-plaintiff so joined notwithstanding the misjoinder of such plaintiff or any proceedings consequent thereon. [28; E. 125.]

Waste

216 (2)

**19.** In any action for prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all other persons having the same or a similar interest. [49; E. 159; O. 203 (e); M. 238 (e).]

Representative  
plaintiff or  
defendant

211.

**20.** Where numerous persons have a common interest in the subject of an intended action, one or more of such persons may sue or be sued or may be authorized by a judge to defend in such action on behalf of or for the benefit of all persons interested; and one or more of such persons may by order of a judge be substituted for the person or persons previously acting. [34; E. 131; O. 200; M. 233.]

Trustees  
and personal  
representatives

204

**21.** Trustees, executors or administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees, or representatives without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but a judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties. [33 (1); E. 130; O. 193; M. 227.]

216 (a) & (b)

**22.** Anyone interested in a trust or in the estate of a deceased person and entitled to a judgment or order for the execution of the trust or the administration of the estate may have the same without making any other person interested therein other than the trustee, executor or administrator a party to the proceeding; provided that a judge may direct that any of such other persons may be added as a party or served with notice. [47 & 48; E. 157 & 158; O. 203 (a) & (b); M. 238 (a) & (b).]

Order for  
administration  
against one  
legatee, etc.

216 (f)

**23.** Any executor, administrator or trustee entitled to a judgment or order for the administration of the estate or the execution of the trust may have such judgment or order against any one legatee, devisee, next-of-kin or beneficiary. [50; E. 160; O. 203 (f); M. 238 (f).]

#### JOINDER OF DEFENDANTS.

All persons as  
defendants

14

**24.** All persons may be joined in one action as defendants against whom any right of relief in respect of or arising out of



the same transaction or occurrence or series of transactions or occurrences is alleged to exist whether jointly, severally or in the alternative, where, if separate actions were brought against such persons, any common question of law or fact would arise; provided that, if it shall appear that such joinder may embarrass or delay the trial of the action, a judge may order separate trials or make such other order as may be expedient; and judgment may be given against such one or more of the defendants as may be found to be liable according to and to the extent of his or their respective liabilities without amendment. [29; E. 126 & 129; O. 186 & 192; M. 219.]

197 **25.** It shall not be necessary that every defendant shall be interested as to all the relief prayed for or as to every cause of action included in any proceeding against him; but a judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest. [30; E. 127; O. 187; M. 220.] Interest of defendant in all relief not necessary

198 **26.** The plaintiff may join as parties defendant to the same action all or any of the parties severally or jointly or jointly and severally liable on or in respect of any one contract, as well as all parties to any kind of negotiable instrument. [31; v. E. 128; O. 188; M. 221.] All or any persons liable on one contract

199 **27.** A surety for the performance of any term of a contract may be made a party to any action upon the contract. [O. 189.] Joinder of surety for performance of a term

MISJOINDER OR NONJOINDER OF PARTIES.

220/1 **28.** No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of parties and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. Misjoinder and nonjoinder

(2) A judge may at any stage of the proceedings either upon or without the application of either party and on such terms as may appear to the judge to be just order that the name of any party improperly joined whether as plaintiff or as defendant be struck out and that the name of any person be added who ought to have been joined whether as plaintiff or as defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, or in order to protect the rights or interests of any person or class of persons interested under the plaintiff or defendant. Striking out and adding parties

(3) No person shall be added or substituted as a plaintiff or as the next friend of a plaintiff without his own consent in writing thereto being first filed. Consent of plaintiff or next friend

(4) Any application to add or strike out or substitute a plaintiff or defendant may be made to a judge at any time before trial on notice or at the trial of the action in a summary manner. [35 E. 133; O. 206 (3); M. 242; 36; E. 134; M. 243.] Application to add or strike out

Addition or  
substitution  
of new  
defendant

**29.** Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered, amend his statement of claim in such manner as the making of the new defendant a party may render proper and serve the amended statement of claim upon the service of such amended statement of claim. [E. 135; have the same time to deliver his statement of defence as if he had been a defendant in the first instance and the proceedings as against such defendant shall be deemed to have begun only upon the service of such amended statement of claim. [E. 135, O. 206, 207 & 208.]

REPRESENTATIVE PARTIES AND ABSENT  
INTERESTED PERSONS.

Where no legal  
representative,  
court may  
appoint a  
representative  
of estate or  
proceed without

**30.** Where in any action or other proceeding commenced or intended to be commenced it is made to appear that a deceased person who was interested in the matters in question has no legal personal representative, the court or a judge may by order direct that the action or other proceeding may be commenced or continued in the absence of any person representing the estate of the deceased person or appoint some person to represent such estate for all the purposes of the action or other proceeding on such notice as may seem proper and notwithstanding that the estate in question may have a substantial interest in the matters or that there may be active duties to be performed by the person so appointed or that he may represent interests adverse to the plaintiff or that there may be embraced in the matter an administration of the estate whereof representation is sought; and the order so made and all subsequent proceedings shall bind the estate of such deceased person in the same manner in every respect as if there had been a duly appointed legal personal representative of such person and such legal personal representative had been a party to the action or other proceeding and had duly appeared therein. [57; E. 168; O. 194; M. 228.]

Appointment of  
representative  
of class, etc.

**31.** In any case in which the right of heirs or next-of-kin or of a class or of an unborn person shall depend upon the construction of an instrument and it shall not be known or shall be difficult to ascertain who is or are such heirs or next-of-kin or class and the court or judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heirs, next-of-kin, class or unborn person shall have been ascertained by means of inquiry or otherwise, the court or judge may appoint some one or more persons to represent such heirs, next-of-kin, class or unborn person and the judgment of the court or judge shall be binding upon the heirs, next-of-kin, class or unborn person so represented.

(2) In any other case in which heirs, next-of-kin, class or unborn persons shall be interested in any proceedings the court or judge may, if having regard to the nature and extent of the interest of such persons or any of them, it shall appear expedient on account of the responsibility or difficulty of ascertaining such



persons or in order to save expense, appoint one or more persons to represent all or any of such heirs, next-of-kin, class or unborn person and the judgment or order of the court or judge shall be binding upon the persons so represented. [44; E. 154; O. 201; M. 234.]

215 **32.** Where questions arise between parties who are some only of those interested in the property respecting which the question arises or where the property in question is comprised with other property in the same settlement, will or other instrument or is the property of an intestate, the court or judge may, if it be deemed expedient, adjudicate upon the questions arising between such parties without making the other persons interested in the property respecting which the question arises or interested under the settlement, will or other instrument, parties to the action and without requiring the whole trusts and purposes of the settlement, will or other instrument, or the whole estate of the intestate, to be executed or administered under the direction of the court and without taking the accounts of the trustees or other accounting of the property touching which the question or questions have arisen or of the whole estate or assets. [O. 202; M. 237.] Proceeding in absence of interested persons

**33.** Where in proceedings concerning a trust a compromise is proposed and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the court and assenting to the compromise, the court or a judge, if satisfied that the compromise will be for the benefit of the absent persons and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons and they shall be bound accordingly, except where the order has been obtained by fraud or nondisclosure of material facts. [E. 131 A.] Approval of compromise in absence of interested persons

217 **34.** The court or a judge may require any person to be made a party to any action or proceeding and may give the conduct of the action or proceeding to such person as the court or judge may think fit and may make such order in any particular case as may appear just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question. [51; E. 161; O. 203 (2); M. 239.] Parties added by court  
Conduct of action

218 **35.** The court or a judge may direct that any person interested in the subject matter of the action who is not under these Rules a necessary party shall be served with a copy of the judgment or order endorsed with a notice in Form A; and after such notice such person shall be bound by the proceedings in the same manner as if he had originally been made a party and shall be at liberty to attend the proceedings under the judgment or order. [52 pt.; E. 162 pt.; O. 203 (3) pt.] Service of judgment on persons interested

Application to  
discharge, etc.,  
judgment

**36.** Any person so served may within fourteen days after such service apply to the court or judge to discharge, vary or add to the judgment or order. [52 pt.; E. 162 pt.; O. 203 (3) pt.]

Order binding  
persons, service  
on whom is  
dispensed with

**37.** The court or a judge may order that any person interested upon whom service of a judgment or order is not directed or has been dispensed with shall be bound as if served and such person shall be bound accordingly except where the judgment or order has been obtained by fraud or nondisclosure of material facts. [E. 797 a.]

Judgment  
saving rights  
of nonparties

**38.** Where at the trial or upon motion for judgment it appears that an action is defective for want of parties, the court or judge may, if it is deemed expedient, render judgment saving the rights of all persons not parties. [O. 205; M. 241.]

Only  
representatives  
to appear on  
creditor's claim  
in administration  
proceedings

**39.** In any action or proceeding for the administration of the estate of a deceased person, no person other than the executor or administrator shall unless by leave be entitled to appear either in court or in chambers on the claim of any person not a party to the action or proceeding against the estate of the deceased person in respect of any debt or liability. The court or a judge may direct or give liberty to any other person interested to appear either in addition to or in the place of the executor or administrator upon such terms as to costs or otherwise as may be thought fit. [58; E. 169; O. 204; M. 251.]

Leave to defend  
to nonparty

187/190 restricted  
to land.

**40.** Where a person who has not been made a party to an action satisfies the court or a judge that he is interested in the subject matter or result of the action and that it is just and convenient that he should be allowed to defend the action in whole or in part, the court or judge may order that he have leave so to do. The order shall limit a time within which such person is to be at liberty to deliver his statement of defence. If such person defends, the style of cause in his statement of defence and thenceforward in the action shall contain his name as a defendant preceded by the words "and by order." [E. 95-98; O. 180-184; M. 210-215.]

#### PARTIES WHERE DISABILITY EXISTS, ETC.

Firms as  
parties

**41.** The Rules relating to parties to actions by or against firms in the firm name are as provided in r. 146. [E. 48a.]

Infants  
as parties

**42.** An infant may sue by his next friend and may defend by the guardian of his estate or, if there be no such guardian, or if it shall be deemed to be in the interests of the infant, by a guardian *ad litem* to be appointed by a judge. [E. 138; O. 197.]

Written  
authority of  
next friend

220 (3)

**43.** Unless otherwise ordered, before the name of any person is used as next friend of an infant or other party or as relator, such person shall sign a written authority to the solicitor to that intent and the authority shall be filed in the office in which the action or proceeding is commenced. [E. 142; O. 198.]



44. A lunatic or person of unsound mind may sue by his guardian or next friend and may defend by his guardian or guardian *ad litem* to be appointed by a judge. [E. 139; O. 217; M. 252.] Lunatics as parties

45. Where an infant, lunatic or person of unsound mind who is a defendant or has been served with notice of a judgment or order is not represented, a guardian *ad litem* may be appointed for him by a judge. [496; E. 139; O. 155 & 219.]

46. A mortgagee suing for sale or foreclosure with or without other relief shall not make any subsequent encumbrancer a party to the action except for the purpose of obtaining possession against a subsequent encumbrancer actually in possession of the mortgaged property; but all subsequent encumbrancers shall be served with notice of the judgment or order directed or made in the action. Parties to mortgage sale or foreclosure actions

47. A vendor suing for specific performance with or without other relief shall not make any encumbrancer whose claim arose subsequently to the making of the agreement a party to the action, unless special relief is claimed against him; but all subsequent encumbrancers shall be served with notice of the judgment or order directed or made in the action. Parties to suit by vendor for specific performance

### THIRD PARTY PROCEDURE.

272 48. Where a defendant is or claims to be entitled to contribution or indemnity over against any person, whether a party to the action or not, he may serve such person, hereinafter called the third party, with a notice setting out in the same manner as in a statement of claim the facts upon which he relies and the nature of the relief claimed. [60 pt. & 67; E. 170 pt. & 177; O. 209 pt.; M. 245.] Notice to third party

224(e) 49. Such notice shall be filed in the office of the clerk in which the statement of claim was filed and a copy thereof shall be served on the third party, together with a copy of the plaintiff's statement of claim, according to the Rules for the service of a statement of claim. [60 pt.; E. 170 pt.; O. 209 pt.; M. 246.] Filing and service

50. A third party may at any time before he defends and the plaintiff may at any time after service of the notice, move to set the notice aside. Setting aside notice

51. Any person served with a notice claiming contribution or indemnity may in the same manner as a defendant serve any other person against whom he claims contribution or indemnity with a notice to that effect and all provisions of these Rules relating to third parties shall apply *mutatis mutandis* to any person served with such notice. [E. 176a.] Third party bringing in fourth or more parties

225 52. A third party may by a statement of defence dispute the liability of the defendant to the plaintiff or his own liability to Statement of defence by third party

the defendant or both. He shall deliver his statement of defence within such time after service of the notice as is limited for the filing of a defence by a defendant to a statement of claim. If he does not dispute the liability of such defendant to the plaintiff he shall be deemed to admit the validity of any judgment which shall be obtained against such defendant whether obtained by consent or otherwise. If he does not dispute his liability to such defendant he shall be deemed to admit his liability to the extent claimed in the notice. A third party failing to defend within the time limited may, however, apply to a judge for leave so to do and such leave may be given upon such terms, if any, as the judge may think fit. [61; E. 171; O. 210.]

Default of  
defence by  
third party

**53.** Where a third party fails to defend, if the defendant giving the notice suffer judgment by default, he may at any time either before or after satisfaction of the judgment against himself by leave of a judge have judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice; provided that it shall be lawful for a judge to set aside or vary such judgment upon such terms as may seem just. [62 & 168; E. 172 & 303; O. 211 & 594.]

**54.** Where a third party fails to defend, in case the action is tried and results in favor of the plaintiff, the judge who tries the action may at or after the trial enter such judgment as the nature of the case may require for the defendant giving the notice against the third party; provided that execution shall not be issued thereon without leave of the judge until after satisfaction by such defendant of the judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the judge may direct such judgment as the nature of the case may require to be entered against the third party in favour of the defendant giving the notice. [63 & 168; E. 173 & 303; O. 212 & 594.]

Defence by  
third party

Application  
for directions

**55.** If a third party defends the defendant giving the notice may apply to a judge for directions and the judge upon the hearing of such application may, if satisfied that there is a question proper to be tried as to the liability of the third party in whole or in part, order the question of such liability as between the third party and the defendant giving the notice to be tried in such a manner or after the trial of the action as the judge may direct; and if not so satisfied may direct such judgment or make such order as the nature of the case may require. [64; E. 174; O. 213 (1).]

Leave to  
third party  
to defend

**56.** A judge upon the hearing of the application may, if it shall appear desirable so to do, give the third party liberty to defend the action upon such terms as may be just or to appear at the trial and take such part therein as may be just and generally may order such proceedings to be taken, documents to be delivered or amendment to be made and give such directions as to the judge shall appear proper for having the question most



conveniently determined and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action. [65; E. 175; O. 213 (2).]

233. **57.** A plaintiff shall not be prejudiced or unnecessarily delayed by reason of questions between the defendant and the third party in which he is not concerned and the court or judge shall give all such directions on terms or otherwise as may be necessary to prevent such delay of the plaintiff where it can be done without injustice to the defendant. [68; v. O. 216.] Plaintiff not to be delayed by third party questions

CHANGE OF PARTIES BY DEATH, ETC.

540. **58.** A cause or matter shall not become abated by reason of the death or insolvency of any of the parties if the cause of action survive or continue and shall not become defective by the assignment, creation or devolution of any estate or title *pendente lite*; and, whether the cause of action survive or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death. [69; E. 178; O. 394.] No abatement by devolution of interest if cause of action survives, nor by death of party between verdict and judgment

541. **59.** In the case of an assignment, creation or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved. [70; E. 180; O. 395.] Procedure on devolution of interest

542. **60.** Where by reason of death or insolvency or any other event occurring after the commencement of a cause or matter and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party or parties may be obtained *ex parte* on application to a judge upon an allegation of such change or transmission of interest or liability or of any such person interested having come into existence. [72 & 73; E. 181; O. 396.] Order to carry on proceedings

543. **61.** An order obtained as in the last preceding Rule mentioned shall, unless the judge shall otherwise direct, be served upon the continuing party or parties or their solicitors and also upon such new party, other than the person making the application, and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding upon the persons served therewith. Service of

544. (2) Upon every copy of such order there shall be endorsed a notice in Form B. [E. 182; O. 397 & 399.] Endorsement upon

Application  
to discharge  
or vary

544

**62.** Where any person who is under no disability or, being under any disability, has a guardian *ad litem* in the cause or matter, shall be served with such order, such person may apply to a judge to discharge or vary such order at any time within twelve days of the service thereof or such other time as the judge may direct. [75; E. 183; O. 398, 401 & 402.]

546

**63.** Where any person being under any disability and not having a guardian *ad litem* in the cause or matter is served with any such order, such person may apply to a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last mentioned person. [76; E. 184; O. 400.]

Application  
to compel  
continuance of  
proceedings

549

**64.** When the plaintiff or defendant in a cause or matter dies and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant or the person against whom the cause or matter may be continued may apply to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered; and in default of such proceedings, judgment may be entered for the defendant or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by r. 598. [77; E. 185; O. 403.]

#### COUNTERCLAIM.

Counterclaim

307

**65.** (a) A defendant in any action may by way of counterclaim against the plaintiff's claim or cause of action set up any claim or cause of action by the defendant either against the plaintiff alone or one or more of several plaintiffs or against the plaintiff and another person whether a party to the action or not.

(b) All matters which under any statute, ordinance, rule or practice might be pleaded by way of set-off shall, if it is desired to set the same up in the action, be pleaded by way of counterclaim.

306(2)

(c) In all cases such counterclaim shall have the same effect as a cross-action so as to enable the court to pronounce a final judgment in the same action both on the original and on the counterclaim. [110 pt.; E. 199 pt.; O. 251 & 252.]

Exclusion of  
counterclaim

307

**66.** Where a defendant sets up a counterclaim, if the plaintiff or any other person named as a party to such counterclaim contends that the claim thereby raised cannot be conveniently disposed of in the same action, he may at any time apply to the court or a judge for an order that such counterclaim may be excluded; and the court or judge may on the hearing of such application make such order as shall be just. [110 pt.; E. 199; O. 254.]



**67.** If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued or dismissed, the counterclaim may nevertheless be proceeded with. [110 pt.; E. 249.]

Proceeding on counterclaim independently of action

**68.** Where in any action a counterclaim is established against the plaintiff's claim, the court or judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance or may otherwise adjudge to the parties such relief as they may be entitled to upon the merits of the case. [E. 250; O. 253.]

Judgment on counterclaim only

**69.** Where a defendant does not dispute the plaintiff's claim and sets up no defence thereto, but sets up a counterclaim, the court or a judge may stay proceedings respecting the plaintiff's claim until the counterclaim is disposed of upon such terms as may seem just. [O. 255.]

Stay of claim until counterclaim disposed of

#### TIME FOR ANSWERING PLEADINGS.

**70.** Except in the case of a defence or a defence to a counter-claim by a person not a party to the action, the time within which a pleading is to be delivered shall be eight days after the service of the pleading to be answered. [O. 256 & 258.]

Time for answering pleadings

Any person served with a counterclaim shall have the same time for the delivery of a defence thereto as if the counterclaim had been a statement of claim.

**71.** The party at whose instance particulars have been delivered under a judge's order shall, unless the order otherwise provides, have four days for pleading after the delivery of the particulars. [E. 204.]

#### TITLES OF PLEADINGS.

**72.** Subject to the Rules relating to counterclaims, all pleadings shall be intituled with the name of the court and the judicial district in which the action was commenced and with a style of cause setting forth the names in full of the plaintiff and of the defendant (but not their residences or occupations), and the capacity in which the plaintiff sues and the defendant is sued, if it be a representative capacity, and shall at the conclusion thereof bear the date of delivery and the name and address of the party, solicitor or agent delivering the same. [33 (2); E. 207; 14; O. 120; 266.]

Formal parts of pleadings

**73.** Where a defendant sets up a counterclaim which raises questions between himself and the plaintiff along with any other person or persons, he shall add to the style of cause a further style of cause setting forth his own name as plaintiff and the names of all persons who, if such counterclaim were to be enforced by a cross-action, would be defendants to such cross-action, as defendants by counterclaim; and shall serve his statement of defence, if any, and his counterclaim on such of them

Title of counterclaim against persons other than plaintiff

as are parties to the action within the period within which he is required to deliver it to the plaintiff. [E. 244; O. 248.]

PAYMENT INTO AND OUT OF COURT AND TENDER.

Payment  
into court  
by way of  
satisfaction,  
but not ad-  
mitting claim

**74.** A defendant may before or with his defence or at any time later by leave of a judge pay into court a sum of money by way of satisfaction of the claim or of any cause of action set up in the statement of claim; but payment into court shall not be deemed an admission of the claim or of the cause of action in respect of which it is paid. [130; E. 255; O. 419 & 420.]

Payment to  
be signified  
in defence

**75.** Payment into court shall be signified in the defence or by notice when the payment is not made with defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein. [131; E. 256; O. 421.]

Tender

**76.** With a defence setting up a tender before action the sum of money alleged to have been tendered shall be brought into court. [132; E. 257; O. 428.]

Payment out  
to plaintiff

**77.** When the liability of the defendant in respect of the claim or cause of action in satisfaction of which the payment into court is made is admitted, or when payment is accompanied by an allegation of tender before action, the money paid into court shall on request be paid out to the plaintiff, or to his solicitor on the plaintiff's written authority unless a judge shall otherwise order. [134; E. 259; O. 419 & 423.]

Payment into  
court without  
admission of  
liability

**78.** When the liability of the defendant in respect of the claim or cause of action, in satisfaction of which the payment into court has been made, is not admitted in the defence, the following Rules shall apply:

(a) The plaintiff may by his reply accept in satisfaction of the claim or cause of action in respect of which the payment into court has been made the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings in respect of such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in court subject to the provisions hereinafter mentioned.

(b) If the plaintiff replies accepting the money, he shall, unless a judge shall otherwise order, be entitled on request to have the money paid out to himself or to his solicitor on the plaintiff's written authority.

(c) If the plaintiff does not accept the sum paid into court in satisfaction of the claim or cause of action in respect of which such payment has been made, but proceeds with the action in respect of such claim or cause of action or any part thereof, the money shall remain in court and be subject to the order of the court or judge and shall not be paid out of court except in pursuance of an order. [135; E. 260; O. 423.]



526 (d) When the plaintiff takes out money in satisfaction of all the causes of action he may, except when the money has been paid in accompanied by an allegation of tender before action, tax his costs of the action and sign judgment therefor, unless the defendant pays them within forty-eight hours after taxation. [O. 425.] Acceptance by plaintiff of money paid in

79. A plaintiff or any person made defendant to a counterclaim may in answer to a counterclaim pay money into court in satisfaction thereof subject to the like conditions as to costs and otherwise as upon payment into court by a defendant. [137; E. 263; O. 427.] Payment into court in satisfaction of counterclaim

PLEADING GENERALLY.

325 80. All pleadings shall be as brief as the nature of the case will admit. [E. 198.] Pleadings to be brief

" 81. Every pleading shall contain and contain only a plain and concise statement in summary form and in ordinary language of the material facts on which the party pleading relies for his claim or defence as the case may be, but not the evidence by which they are to be proved, and shall, when convenient, be divided into paragraphs numbered consecutively. Dates, sums and numbers shall be expressed in figures and not in words. [109; E. 200; O. 268.] Contents of pleadings

82. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary, particulars (with dates and items, if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses or damages, and exceed three folios, the fact must be so stated with a reference to full particulars already delivered or to be delivered with the pleading. [E. 202.] Particulars

336 83. When any party intends to contest the performance or occurrence of any condition precedent, he shall distinctly specify in his pleading such condition and its nonperformance or non-occurrence; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading. [115; E. 210.] Conditions precedent

330 84. Whenever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material. [121; E. 217; O. 275.] Brief statement of effect of documents

331 85. Whenever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. [122; E. 218; O. 276.] Allegation of malice, fraudulent intention, etc.

Allegation  
of notice

337

**86.** Whenever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred be material. [123; E. 219; O. 277.]

Allegation  
of implied  
contract or  
relation

333

**87.** Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail; and if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as being implied from such circumstances, he may state the same in the alternative. [125; E. 220; O. 278.]

Facts presumed  
by law

334

**88.** Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied; (e.g., consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim.) [125; E. 221; O. 279.]

Relief claimed  
to be stated  
specifically

378

**89.** Every statement of claim shall state specifically the relief which the plaintiff claims either simply or in the alternative and it shall not be necessary to ask for general or other relief which may always be given, as the court or a judge may think just, to the same extent as if it had been asked for. And the same Rule shall apply to a counterclaim or relief claimed by the defendant in his defence. [E. 230; O. 273.]

Several  
distinct  
claims

379

**90.** Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly. And the same Rule shall apply where the defendant relies upon several distinct grounds of defence or counterclaim founded upon separate and distinct facts. [E. 231; O. 274.]

Stated  
or settled  
account

**91.** In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars; but in every case in which a statement of account is relied upon by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings. [E. 232.]

Fact not denied  
to be taken as  
admitted except  
against infant  
or lunatic

**92.** Every allegation of fact in any pleading not denied expressly or by necessary implication or stated to be not admitted in the pleading of the opposite party shall be taken to be admitted, except as against an infant or lunatic. [114; E. 209.]

Specific denials  
of essential  
facts

**93.** It shall not be sufficient for a defendant in his statement of defence to deny generally the essential allegations of the statement of claim or for the plaintiff in his defence to a counter-



claim to deny generally the essential allegations of the counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, which is essential to the cause of action set up in the claim or counter-claim, except damages. [118; E. 213.]

**94.** If the defendant propose at the trial to disprove the case, or part of the case, set up by the plaintiff by proving a different version of the transaction or occurrence or series of transactions or occurrences relied upon by the plaintiff in support of his cause of action or part thereof, a mere denial of the allegation of the statement of claim shall not be sufficient but the defendant shall set up his version in his defence, but upon so doing may notwithstanding anything in these Rules, deny generally the case or part thereof set up by the plaintiff; and this Rule shall apply to a defence to a counterclaim. Defendant relying on different version to set same up

**95.** In actions for a debt or liquidated demand in money a mere denial of the debt shall be inadmissible. [E. 234.] Mere denial of debt inadmissible

**96.** In actions upon bills of exchange, promissory notes or cheques, a defence in denial must deny some matter of fact; e.g., the drawing, making, endorsing, accepting, presenting or notice of dishonour, of the bill or note. [E. 235.] Defence in actions on bills, etc.

**97.** In actions for money demands a defence in denial must deny such matters of fact from which the liability of the defendant is alleged to arise as are disputed; e.g., in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery or the amount claimed; in an action for money had and received, it must deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff. [E. 236.] Defence in actions for money demand

**98.** When a party in any pleading denies in allegation of fact in the previous pleading of the opposite party, he must not do so evasively but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount but he must deny that he has received that sum or any part thereof or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances. [119; E. 215.] Denials must not be evasive

**99.** When a contract, promise or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise or agreement alleged or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise or agreement, whether with reference to the Statute of Frauds or otherwise. [120; E. 216; O. 282.] Denial of contract, promise or agreement

No denial as  
to damages

**100.** No denial or defence shall be necessary as to damages claimed or their amount or the particulars thereof; but they shall be deemed to be put in issue in all cases unless expressly admitted. [E. 237.]

Denial of  
right of  
representative  
party

**101.** If either party wishes to deny the right of any other party to claim as executor or as trustee (whether for the benefit of creditors or otherwise), or in any representative or other capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically. [E. 238; O. 280.]

Plea of  
not guilty  
by statute

**102.** Except where the right is given by Imperial Statute in force in the province *proprio vigore* or by Statute of Canada, a defence of "not guilty by statute" shall not be pleaded. In case the defence of "not guilty by statute" is pleaded in pursuance of any such statute as aforesaid, the defendant shall not be permitted to plead any other defence to the same cause of action. [cf. 113; E. 208; O. 286.]

**103.** In every case in which a party shall plead "not guilty by statute" he shall insert in the margin of his pleading the words "by statute," together with the year in which the Act of Parliament on which he relies was passed and also the chapter and section of such Act and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Act of Parliament. [E. 252; O. 287.]

Matters which  
show action not  
maintainable,  
e.g., fraud  
or Statute of  
Limitations  
to be pleaded

**104.** The defendant or plaintiff, as the case may be, must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as, if not raised, would be likely to take the opposite party by surprise or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, Statute of Limitations, release, payments, performance, facts showing illegality either by statute or common law, or Statute of Frauds. [116; E. 211; O. 271.]

New grounds  
of claim and  
inconsistent  
allegations  
forbidden

**105.** No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same. [117; E. 212; O. 288.]

Joinder  
of issue

**106.** The plaintiff by his reply may join issue upon the defence and each party in his pleading, if any, subsequent to reply may join issue upon the previous pleading. [E. 214 pt.]

Close of  
pleadings

**107.** As soon as either party has delivered a joinder of issue upon the pleading of an opposite party, or as soon as the time for amending the pleadings under these Rules or under any order has expired, the pleadings shall be deemed to be closed and issue joined as between these parties. [156 pt. & 157; E. 302 pt.; O. 262 & 306.]



328 **108.** Every material allegation of fact in a pleading upon which issue is joined shall be deemed to have been denied. [108 pt.; E. 214; O. 302 pt.]

**109.** Where the court or a judge is of opinion that any allegations of fact denied or not admitted, whether in a pleading or after notice to admit fact or otherwise, ought to have been admitted, the court or judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted. [E. 242; O. 1149.]

Costs of  
allegations  
improperly  
denied

357/8 **110.** Any ground of defence or counterclaim which has arisen after action brought but before the defendant has delivered his statement of defence may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence; and if, after a statement of defence has been delivered, any ground of defence arises to any counterclaim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any ground of reply. In any such case it shall be distinctly alleged that the ground set up has arisen after action brought. [146; E. 278; O. 289 & 290.]

Defence or  
counterclaim  
arising after  
action brought

369 **111.** Where any ground of defence or counterclaim arises after the defendant has delivered a statement of defence, the defendant may, and where any ground of defence to any counterclaim arises after reply, the plaintiff may, at any time by leave of a judge deliver a further defence or a further reply, as the case may be, setting up such ground of defence or counterclaim. [147; E. 283; O. 291.]

Delivery of  
further defence  
or reply

**112.** Whenever any defendant in his statement of defence or in any further statement of defence as in the last Rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence and either party may apply to a judge to dispose of the costs of the action or of such portion thereof as pertains to the defence so confessed. [148; E. 280; O. 295.]

Confession  
of defence

#### RAISING POINT OF LAW.

302 **113.** Any party may in his pleading object to the next preceding pleading of the opposite party on the ground that it discloses no cause of action, defence or answer, as the case may be. The objection shall specify the particular points of law upon which it is based. [149 pt.; E. 282 pt.; O. 259 pt.]

Raising of  
point of law

302 **114.** The questions of law so raised shall be disposed of by the judge who tries the action at or after the trial; provided that by consent of the parties or by order of the judge on the application of either party the same may be set down for hearing and disposed of at any time before the trial. [149 pt.; E. 282 pt.; O. 259 pt.]



Point of law  
disposing of  
action

307

**115.** If in the opinion of the court or a judge the decision of such point of law substantially disposes of the whole action or of any distinct cause of action, ground of defence, counterclaim or reply therein, the court or judge may thereupon dismiss the action or make such other order therein as may be just. [150; E. 283; O. 260.]

#### DISCONTINUANCE.

Discontinuance  
or withdrawal  
of part of  
complaint

560

**116.** The plaintiff may at any time before entry for trial by notice in writing wholly discontinue the action against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action or, if the action be not wholly discontinued, the costs occasioned by the matters so withdrawn. Such costs shall be taxed and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.

(2) Save as in this Rule otherwise provided it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the court or a judge, but the court or a judge may, before or at or after the hearing or trial, upon such terms as to costs and otherwise as may seem just, order the action to be discontinued or any part of the alleged cause of complaint to be struck out.

Withdrawal  
of defence or  
counterclaim

(3) The court or a judge may in like manner and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counterclaim to be withdrawn or struck out; but it shall not be competent to a defendant to withdraw his defence or any part thereof without such leave. [174; E. 286; O. 430 & 431.]

Costs of  
discontinued  
action

560 (2)

**117.** Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn if the action be not wholly discontinued, if such costs are not paid within four days after taxation. [176; E. 288; O. 430 pt.]

Stay of  
subsequent  
action until  
costs paid

**118.** If any subsequent action shall be brought before payment of the costs of a discontinued action for the same or substantially the same cause of action, the court or a judge may, if they or he think fit, order a stay of such subsequent action until such costs shall have been paid. [177; E. 289.]

#### COMMENCEMENT OF ACTION.

##### STATEMENTS OF CLAIM.

Commencement  
of action

177

**119.** Except as otherwise provided, every action shall be commenced by the issue of a statement of claim by the clerk. [1; O. 120; Man. 172-174.]

**119a.** Every action in the District Court shall be commenced, and unless otherwise ordered, shall be carried on in the judicial district in which the defendant or one of the defendants



resides or carries on business at the time of the commencement of the proceedings, or in which the cause of action wholly or in part arose.

176 **120.** The clerk upon a copy thereof being filed with him shall issue the statement of claim by signing the same and sealing it with his seal of office. [2; O. 123.] Issue of statement of claim

**121.** The statement of claim shall bear the date of the day on which it is issued. [3 pt.; O. 124.]

**122.** The clerk shall make a note upon the statement of claim of the office and judicial district from which it is issued and shall subscribe his name thereto. [O. 125.]

177 **123.** The clerk shall number every document filed with him whereby a proceeding is commenced. All documents subsequently filed in the same proceeding shall be endorsed with the same number. Whenever a document whereby proceedings are commenced is filed with or issued by a clerk, he shall make a note thereof and of the number assigned to the proceeding in the procedure book.

**124.** During the currency of the statement of claim concurrent statements of claim may be issued. They shall bear date of the same day as the original statement of claim and shall also be marked "concurrent" with the date of actual issue. Concurrent statements of claim shall be in force only during the currency of the original statement of claim. [5; E. 40; O. 129.] Concurrent statements of claim

**125.** The court or a judge may at any time direct that all proceedings in any action be transferred to the office of the clerk of any other judicial district and thenceforward the proceedings shall be intitled and continued in the latter judicial district. Transfer of proceedings

176 **126.** Every statement of claim shall cease to be effective for any purpose against any defendant thereto who shall not have been served therewith within six months of the issue thereof; but the plaintiff may before but not after the expiration of the six months apply to a judge for leave to renew the statement of claim and the judge, if satisfied that reasonable efforts have been made to serve such defendant or for other good reason, may order that the plaintiff be at liberty to renew the statement of claim for a further period of three months; and so from time to time during the currency of the renewed statement of claim; and upon the filing of the order the clerk shall mark the statement of claim with a memorandum to the following effect: "Renewed for the period of three months from . . . , by order of . . . ;" which shall be signed by him and sealed with the seal of the court; and all copies for subsequent service shall bear a copy of such memorandum. [6; E. 45; O. 132.] Renewal of statement of claim

268 **127.** All copies of a statement of claim which are served shall bear on them a copy of all memoranda and endorsements on the original statement of claim. [M. 176, 181 & 285-6.] Endorsements on copies of statement of claim

**128.** All copies of a statement of claim which are served shall have at the foot or end thereof or endorsed thereon or attached thereto:

(1) If the statement of claim is issued by a solicitor for the plaintiff, a statement to that effect and the solicitor's name and address for service; or if by a solicitor as agent for another solicitor, the solicitor's name and address and also the agent's name and address for service, and in either case the address for service shall be within three miles of the office of the clerk from which the statement of claim issues;

(2) If the statement of claim is issued by the plaintiff in person, a statement to that effect and the plaintiff's address for service;

(3) A statement of the plaintiff's residence;

(4) A statement of the defendant's residence so far as known to the plaintiff;

(5) A notice to the following effect:  
"To the defendant, . . . :

"You are hereby notified that the plaintiff may enter judgment in accordance with this statement of claim or such judgment as, according to the practice of the court, he is entitled to, without any further notice to you unless within. (*Here insert the period of time prescribed by the Rules or by any order fixing the time for defence, in the latter case adding the following words: 'Being the period prescribed by order dated the . . . day of . . . , 19 . . . '*) after service hereof upon you, excluding the day of service, you cause to be filed in the office of the clerk of this court from which the statement of claim has issued, either:

"(1) A statement of defence; or, except as regards any claim for a debt or a liquidated demand;

"(2) A demand that notice of any applications to be made in the action be given to you;

and unless within the same time a copy of your statement of defence or demand be served upon the plaintiff or his solicitor at his stated address for service." [9; E. 19 & 20; O. 134 & 135.]

Endorsements  
in proceeding  
not begun by  
statement  
of claim

**129.** In all cases where proceedings are commenced otherwise than by statement of claim, including proceedings by counterclaim against a person not a party to the action, the provisions of the next preceding Rule, adapted so far as applicable, shall apply to the document by which such proceedings are commenced. [E. 22; O. 136.]

Endorsements  
on defence  
or demand  
of notice

**130.** The statement of defence or demand of notice and the copies served shall have at the foot or end thereof or endorsed thereon statements showing:

(1) By whom the statement of defence or demand is filed and whether by the defendant in person or by a solicitor on his behalf or an agent for him;

(2) The defendant's residence;

(3) An office or other place to be known as the defendant's address for service within three miles of the office of the clerk



from which the statement of claim issued, at which address service of subsequent proceedings in this action may be served as effectively as if served upon the defendant personally. [81; E. 80 & 81; O. 169; M. 286.]

**131.** If a party fails to give an address for service or gives an address which a judge on *ex parte* application declares to be a fictitious or illusory address, he shall not be entitled to be served with any pleadings or other proceedings in the action. [9 pt.; 82 pt.; E. 82; O. 170.]

If no address or fictitious address

**132.** In these Rules delivering a pleading means the filing and service thereof. [E. 206; O. 267.]

Meaning of delivery of a pleading

**133.** No personal service on a defendant of a statement of claim, or other document by which an action or proceeding may be commenced, shall be required when the defendant by his solicitor accepts service and undertakes to file and files a statement of defence or demand of notice. [E. 48; O. 145; M. 180.]

Personal service, when dispensed with

**134.** A solicitor not filing a statement of defence or demand of notice for a defendant in pursuance of his written undertaking so to do shall be liable to an attachment. [E. 88; O. 174.]

Solicitor not filing defence, etc., in pursuance of undertaking

**135.** Service of a statement of claim against a person other than a plaintiff shall as far as reasonably practicable be made upon the defendant personally. [E. 49; M. 182.]

Service to be personal, where reasonably practicable

**135a.** Without prejudice to any other method of service provided by these Rules, service by registered mail upon a defendant who resides within the Province of Alberta at a distance of more than ten miles from the nearest city, town or incorporated village therein, of a statement of claim or garnishee summons for a debt or liquidated demand, where the amount claimed does not exceed \$1,000, shall be deemed a sufficient service thereof, if the post office receipt for the letter containing such documents purporting to be signed by the defendant be produced as an exhibit to the affidavit of service, which shall be in Form F in these Rules.

The statement of claim shall be deemed to be served on the day of the date of the receipt which purports to be signed by the defendant.

**136.** If it be made to appear to a judge that the plaintiff is unable to effect prompt personal service, whether because the whereabouts of the defendant cannot be ascertained or for any other reason, the judge may make such order for substituted service by advertisement or otherwise as may be just; provided that, if it appear that the defendant is or is likely to be without the jurisdiction of the court, such a case shall be shown as would justify an order for service without the jurisdiction; and provided that judgment shall not be entered in default of defence in any case of such substituted service except by leave of a judge. [15, 21 & 22; E. 49; O. 146 & 167; M. 182 & 183.]

Substituted service

Service in case  
of an infant

278

**137.** Where the action is in respect of real or personal property in which an infant is interested, the infant shall not be served, but service shall be made upon the guardian of the estate of the infant if there be one, unless a guardian *ad litem* shall have been appointed. In that case the guardian *ad litem* shall be served. If there be no guardian of the estate and no guardian *ad litem* shall have been appointed then service shall be made upon the official guardian. Where the guardian of the estate, the guardian *ad litem* or the official guardian is served for more than one infant defendant, one copy only need be served, but the name of each person on whose behalf such guardian is served shall be stated upon the copy.

(2) In the case of service upon the official guardian the official guardian shall be the guardian *ad litem* of the estate of the infant until the court or a judge otherwise orders.

(3) It shall be the duty of the guardian *ad litem* promptly to attend to the interests of the infant and to take all such proceedings as may be necessary for the protection of such interests and for that purpose to communicate with all proper persons and parties, including the father, the guardian of the estate of the infant if there be one, and the person with whom or under whose care the infant is. [14 (8); E. 51; O. 152 (2) & (3); M. 189.]

279

**138.** Where the action is brought for the recovery of possession of real or personal property actually in the possession of an infant defendant, he also shall be served in the same manner as if he were an adult defendant. [O. 153; M. 190.]

"

**139.** Where the action is brought in respect of a personal tort or for the recovery of money only, an infant defendant may be served in the same manner as if he were an adult, but a judge may order that in addition thereto service be made upon or notice be given to any other person with a view to the protection of the defendant's interest. [O. 154; M. 191.]

Service in case  
of lunatic

282

**140.** Where the action is brought against a lunatic, whether so found or not, service upon the guardian of the estate of the lunatic, if there be one, and otherwise upon such person as a judge shall direct, shall be sufficient. [14 (9); E. 52 (2); O. 157 & 158.]

Service upon  
a firm

**141.** The rules for the service of persons sued in a firm name are as provided in r. 146.

Service upon  
a corporation

285/6

**142.** Service of a statement of claim may be made upon a corporation aggregate, whether its principal or head office be within or without the jurisdiction and whether the corporation be domestic or foreign, by serving the mayor, reeve, president, chairman or other head or chief officer, or the manager, managing director, cashier, secretary, treasurer, secretary-treasurer, clerk, agent or other representative by whatsoever name or title he may be known, of the corporation (whether such head or



chief officer or other representative reside or be within or without the jurisdiction), or of any branch or agency of the corporation within the jurisdiction, or (without restricting the generality of the foregoing provisions) in the case of railway companies, any station master or station agent, or in the case of any telegraph company, any telegraph operator having charge of any office of the company, or in the case of any express company, any express agent having charge of any office of the company, or in the case of a chartered bank, any manager, assistant manager, agent or assistant agent, or accountant of the bank, and in the case of any life, accident or fire insurance company or guaranty company, any provincial or district agent or representative resident in the province, or in the case of a foreign corporation, registered in pursuance of *The Foreign Companies Ordinance*, any attorney appointed as the company's attorney in pursuance of the said Ordinance, or in the case of any corporation in respect whereof provision is made by Statute or Ordinance for the mode of service on the company, in the manner provided by such Statute or Ordinance, or in any case, the person for the time being acting in the place of any of the above mentioned officers. [14 (3); E. 55; O. 159 & 160; M. 198-200.]

287 **143.** If the defendant is out of the jurisdiction but has an agent, manager, managing clerk or other representative resident and carrying on his business within the jurisdiction, service made upon such agent, manager, managing clerk or other representative shall be deemed service upon the defendant. [14 (2); O. 147.]

Service upon  
representative

**144.** A defendant before delivering a defence shall be at liberty to apply to a judge to set aside the service of the statement of claim upon him, discharge or set aside the order authorizing such service or to set aside the statement of claim, on the ground of irregularity or otherwise. [87; E. 100.]

Application to  
set aside service  
or statement  
of claim

190 ✓ **145.** Every solicitor whose name is endorsed on any statement of claim or other proceeding by which a cause or matter is commenced, shall on demand in writing made by or on behalf of any party or person who has been served therewith, declare forthwith, in writing, whether the cause or matter has been commenced by him or with his authority or privity.

Disclosure as  
to authority  
of solicitor

(a) If he answers in the affirmative then he shall also, in case a judge so directs, disclose in writing within a time to be limited by the judge the profession or occupation and the place of abode of the plaintiff or party on whose behalf he is acting, on pain of being guilty of a contempt of court.

(b) If the solicitor declares that the cause or matter was not commenced by him or with his authority or privity, all proceedings upon the same shall be stayed and no further proceedings shall be taken thereupon without leave of a judge. [10; E. 42; O. 143; M. 178.]

## ACTIONS BY AND AGAINST FIRMS.

Action  
by firm

181

**146.** Where an action is commenced in the name of a firm, the plaintiffs or their solicitor shall on demand in writing by or on behalf of any defendant declare forthwith in writing the names and places of residence of all the persons constituting the firm.

(a) If the plaintiffs fail to comply with such demand, all proceedings in the action may upon an application for that purpose be stayed upon such terms as a judge may direct.

(b) Where the names of the members of the firm are so declared, the action shall proceed in the same manner and with the same consequences in all respects as if they had been named as the plaintiffs in the statement of claim, but all proceedings shall nevertheless continue in the name of the firm. [38; E. 648 (b); O. 144; M. 179.]

Partners, how  
suing or sued

213

(c) Any two or more persons claiming or being liable as co-partners carrying on business within the jurisdiction may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply to a judge for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner and verified on oath or otherwise as the judge may direct. [37 pt.; E. 648 (a); O. 222.]

Service upon  
partners

213

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(d) Where persons are sued as partners in the name of their firm, the statement of claim shall be served either upon any one or more of the partners or at the principal place within the jurisdiction of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and such service shall be deemed good service upon the firm so sued whether any of the members thereof are out of the jurisdiction or not and no leave for such service shall be necessary; provided that in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action the statement of claim shall be served upon every person within the jurisdiction sought to be made liable. [39; E. 648 (c); O. 223.]

Defence by  
partners

244

(e) A defence by persons sued as partners in the name of their firm shall be in the name of the firm but shall disclose the names and addresses of the several members of the partnership and any member of the firm shall nevertheless be at liberty to defend in his own name individually; but all subsequent proceedings shall continue in the name of the firm. [41; E. 648 (e); O. 225.]

No defence  
except by  
real partners

(f) Where a statement of claim is served upon a person having the control or management of a partnership business, no defence by him shall be necessary unless he is a member of the firm sued. [42; E. 648 (f); O. 226.]

Execution  
of judgment  
against a firm

698

(g) Where a judgment or order is against a firm, execution may issue:

(1) Against the firm;



(2) Against any person who has defended in his own name and has admitted on the pleadings that he is or who has been adjudged to be, liable as a partner;

(3) Against any partner who has been individually served with the statement of a claim and has failed to defend.

699

(h) If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the court or a judge for leave so to do; and the court or judge may give such leave if the liability be not disputed or, if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue in an action may be tried or determined. But except as to any property of the partnership a judgment against a firm shall not render liable, release or otherwise affect any member thereof who was out of the jurisdiction when the action was commenced and has not defended, unless he was a party under his individual name to the action or has been served within the jurisdiction. [E. 648 (h); O. 228.]

(i) Debts owing from a firm carrying on business within the jurisdiction may be attached, although one or more members of such firm may be resident out of the jurisdiction; provided that the garnishee order is served within the jurisdiction upon any person having the control or management of the partnership business or any member of the firm. A notice of dispute of liability in the name of the firm shall be sufficient. [E. 648 (i); O. 229.]

Attachment  
of debts owing  
from a firm

(j) The above Rules shall apply to actions between a firm and one or more of its members and to actions between firms having one or more members in common, provided such firm or firms carry on business within the jurisdiction, but no execution shall be issued in such actions without leave of the court or a judge and on an application for leave to issue execution all such accounts and inquiries may be directed to be taken and made and directions given, as may be just. [E. 648 (k); O. 230.]

Actions between  
co-partners  
and firm and  
partners

244

(k) Any person carrying on business within the jurisdiction in a name or style other than his own name, may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all Rules relating to proceedings against firms shall apply. [16 (5) & 37 pt.; E. 648 (1); O. 231.]

Trading under  
assumed name

#### TIME FOR DEFENCE.

187/3

**147.** The period of time after service of the statement of claim within which a defendant is required to serve his statement of defence or demand of notice if served out of the jurisdiction shall be such time as is fixed by the order permitting such service; and if served within the jurisdiction shall be as follows:

Time limited  
for defence

Within fifteen days after service, excluding the day of service, if he be served south of the fifty-fifth parallel of north latitude;

Within thirty days, if he be served north of the said parallel of north latitude:

396

Provided that in any case a judge may by order either reduce or extend the periods of time above stated. [3 pt.; O. 168.]

#### PROCEDURE UPON DEFAULT OF DEFENDANT.

Procedure  
in default  
of defence  
or demand

**148.** In default of the defendant filing or serving his statement of defence or his demand of notice within the time limited the plaintiff may, having regard to the nature of the claim, on *praecipe* and proper proof by affidavit, either enter final judgment against the defendant or require the clerk to enter in the procedure book a note to the effect that the defendant is in default, but the defendant may deliver a statement of defence at any time before final judgment has been entered or before he has been noted in default and may deliver a demand of notice at any time before final judgment.

Judgment on  
default against  
infant, etc.

**149.** Judgment shall not be entered against an infant or a lunatic on default except by leave of a judge. [88; E. 101.]

Defendant  
in default  
not entitled  
to notice

**150.** Except where otherwise provided by these Rules or where otherwise ordered by the court or a judge, a defendant who fails to defend or demand notice shall not be entitled to notice of any subsequent proceedings in the action. [82 pt.; O. 573.]

Filing  
documents  
on default of  
defendant

607

**151.** Where a defendant fails to defend or demand notice, the plaintiff before taking proceedings upon such default shall, unless otherwise ordered, file an affidavit of service of the statement of claim or other document by which the cause or matter is commenced or the notice in lieu thereof, as the case may be. [89; E. 102; O. 574 changed.]

Final judgment  
where demand  
liquidated

609

**152.** When a statement of claim includes a claim for a debt or liquidated demand with or without interest and whether such interest is by way of damages or not and any defendant fails to deliver a statement of defence or delivers a defence limited to part only of the claim, the plaintiff may as against such defendant enter final judgment for any sum in respect of which no defence is delivered, not exceeding the principal sum claimed with such interest as is justified by the statement of claim to the date of judgment and for his costs appropriate to such claim and may proceed with the action against any other defendants and in respect of any other claims. [90, 91, 158, 159, 162, 168; E. 103, 104, 107 pt.; 295, 296 & 298; O. 575, 587.]

Judgment for  
recovery of goods  
or possession  
of land

613

**153.** When a statement of claim includes a claim for the recovery of goods or land and any defendant fails to deliver a statement of defence or delivers a defence limited to part only of the claim the plaintiff may as against such defendant enter judgment for the recovery of the goods or possession of the land in respect of which no defence is delivered and for his costs appropriate to such claim and may proceed with the action



against any other defendants and in respect of any other claims. [92, 93 & 96, 160, 161, 163 & 165; E. 105-108, 293-298; O. 577, 578, 588, 590.]

**154.** In any action on a bond for non-performance of any covenants or agreements in any indenture, deed or writing contained, if the defendant fails to defend, the plaintiff shall be entitled to sign judgment for the amount of the penalty and costs, but shall not be entitled to issue execution thereon except for the amount or amounts of such damages as shall be assessed as directed by a judge upon the breaches alleged in the statement of claim or upon any further breaches which the plaintiff may from time to time subsequently suggest by notice to be served upon the defendant. [E. 114; O. 580.] Judgment in action on bond

**155.** When a defendant sets up no defence or no defence to part of the claim but sets up a counterclaim, no execution shall be issued by the plaintiff without leave. [165 pt.; E. 298 pt.; O. 255.] Judgment where counterclaim, but no defence or partial defence

**156.** In all cases other than those provided for by the next three preceding Rules, where a defendant either by original action or by counterclaim has made default in delivering a defence or a demand of notice, the plaintiff may on *praecepto* note such defendant in default. [O. 263.] Noting in default

**157.** If a sole defendant has, or all the defendants have, been noted in default, the plaintiff may apply *ex parte* to a judge and the judge may with or without proof of the plaintiff's claim, as he shall see fit, make such order for final judgment or assessment of damages or otherwise as the plaintiff is entitled to. [99 pt.; 166; E. 300; O. 593.] Order after noting in default

**158.** If some only of the defendants have defended, the plaintiff may proceed with the action against the defendants who have defended and at the trial or other disposition of the action the court or judge may give such judgment against all or any of the defendants as the circumstances of the case shall require, or the plaintiff may apply to a judge on notice to the defendant or defendants who have defended, unless such notice be dispensed with by the judge, for an order by way of judgment against any defendants noted in default and the judge may make such order for final judgment or assessment of damages or otherwise against the latter defendants as the plaintiff is entitled to without prejudice to the right of the plaintiff to proceed with the action against the other defendants. [99 pt.; 167; E. 301; O. 593.] Some defendants only in default

**159.** Notwithstanding anything contained in the next preceding two Rules, no order for final judgment of nullity or dissolution of marriage shall be made, whether or not there is default of defence, until the judge is satisfied of the truth and sufficiency of the facts on which the claim for such judgment is founded. [99 pt.] Judgment of nullity or marriage

(2) Proof of the service of the statement of claim upon the defendant shall be made in such manner as shall satisfy the judge that the defendant has been served.

Damages in lieu  
of noting in  
default

**160.** Where on a claim for damages a plaintiff becomes entitled to note a defendant in default, he may in lieu thereof sign final judgment for the sum of \$10 as damages and, if such claim be the only claim in the action, for the costs of the action to be taxed; and if instead of signing final judgment he proceeds to an assessment of damages, and fails to recover more damages than \$10, he shall not, unless the court or a judge otherwise orders, recover any costs of noting the defendant in default or costs subsequent thereto and shall pay the costs of the defendant, if any, subsequent to such noting. [O. 589 A.]

Procedure  
on delivery  
of demand  
of notice

**161.** In all actions in which a defendant delivers a demand of notice the plaintiff shall be entitled to proceed against him in the same manner as if he had not done so, except that he shall be entitled to notice of all motions against him subsequently made in the action, unless in any particular instance the court or judge before whom any such motion is made shall dispense with such notice.

Consequences  
of order  
striking out  
defence

**162.** Where any order is made in an action striking out the defence of a defendant, the consequences shall be the same as if the defendant had failed to deliver any defence or demand of notice.

Setting aside  
judgment  
upon default

**163.** Any judgment entered upon default of defence or in pursuance of an order obtained *ex parte* may be set aside or varied by a judge upon such terms as may be just. [100 & 102; E. 110, 304; O. 639.]

#### SITTINGS OF COURT.

Sittings  
of Appellate  
Division

**164.** The Appellate Division of the Supreme Court shall sit twice a year at Edmonton and twice a year at Calgary on such days as the judges thereof shall appoint and at any other time and place that the said judges may deem necessary.

**165.** The chief justice of the court when sitting shall preside at such sittings and in his absence the senior judge sitting shall preside. [S.C. Act, s. 31.]

**166.** Any such sitting may be adjourned from time to time and from place to place as may be necessary. [498.]

Sittings for  
trial of action

**167.** The judges of the Supreme Court shall appoint the days and places upon which sittings for trial of actions shall be held, but a judge may hold a special sitting at any other time or place. [O. 113.]

Sittings in  
chambers

**168.** Sittings in chambers shall be held at Edmonton and Calgary on such days and hours as the resident judges shall appoint.



**169.** If from illness or other cause there should be no judge present at the time and place appointed for holding a sitting, the clerk may make such adjournment or adjournments as may be necessary. [543.] Adjournments

**170.** Any sittings of a single judge either in court or in chambers may be adjourned from time to time and from place to place as to the said judge may seem meet.

**171.** One or more of the judges shall be selected for the hearing (in Edmonton and Calgary) during the vacations of all such applications as may require to be heard promptly. [O. 114.] Hearing during vacations

#### MODE OF TRIAL.

**172.** In actions of slander, libel, false imprisonment, malicious prosecution, seduction or breach of promise of marriage, and in actions founded upon any other tort or contract in which the amount claimed exceeds \$1,000, and in actions for the recovery of real property, if either party signify his desire that the action be tried with a jury the action shall, subject to the next following Rule, be directed to be tried with a jury. Trial with jury

**173.** If on the motion for directions or on a subsequent application it is made to appear that the trial of any action included in the next preceding Rule may involve a prolonged examination of documents or accounts or a scientific or local investigation which, in the opinion of the judge, cannot conveniently be made by a jury, such action may be directed to be tried without a jury, whether it has been previously directed to be tried by a jury or not.

**174.** No action shall be tried with a jury, unless it has been commenced in or transferred to the Supreme Court.

**175.** Every trial of any question or issue of fact with a jury shall be by a single judge with a jury of six persons, whose verdict shall be unanimous. [172; E. 433.]

**176.** Unless the trial is directed to be with a jury the mode of trial shall be by a judge without a jury; provided that in any case the court or a judge may at any time order any cause, matter, or issue to be tried by a judge with a jury or by a judge sitting with assessors or by a special referee with or without assessors. [E. 431.] Trial without jury; assessors

**177.** The court or a judge may order that different questions of fact arising in any action be tried by different modes or that one or more questions of fact be tried before the others and may appoint the place or places for trial; and in all cases may order that one or more issues of fact be tried before any other or others. [E. 432; O. 531; M. 547.] Separate trials of different questions

Trial by  
two or more  
judges

569

**178.** Either party to an action may apply to the appellate division for a trial before two or more judges with or without a jury and the court may in its discretion upon hearing the parties grant or refuse the application. [O. 533; M. 549.]

570

**179.** When the Crown is actually or immediately interested, a trial before two or more judges may be had as of right. [O. 534; M. 550.]

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**180.** When a trial before two or more judges is directed, the court may appoint such time and place for the trial as it may think fit. [O. 535; M. 557.]

#### ENTRY FOR TRIAL.

Entry for  
trial

575

**181.** Either party may enter the action for trial, the plaintiff not later than ten days and the defendant not later than four days before the first day of the sittings at which the action is directed to be tried. [E. 446; O. 538 pt.; M. 555.]

Order of  
trial

575

**182.** If both parties enter the action for trial it shall be tried in the order of the first entry. [O. 542 (5).]

Notice of entry  
for trial

**183.** Any party entering an action for trial shall not later than the day following such entry give notice thereof to the opposite party.

Deposit of  
expenses of jury

**184.** When direction is made that a trial be with a jury the party at whose instance such direction is made shall, unless otherwise ordered, within ten days of such direction and not later than two weeks before the first day of the sittings at which the trial is directed to be held, deposit with the clerk such sum of money as the clerk shall consider sufficient to pay the expenses of such jury and in the event of such sum proving insufficient such party shall upon demand pay such further sum as the clerk may require. If any surplus remain after payment of the said expenses by the clerk, it shall be returned. If default is made in making such deposit, the direction for trial shall thereupon become ineffective. [171.]

Pleadings and  
particulars for  
use of judge

576

**185.** Before an action shall be entered for trial, the party desiring to enter it shall deliver to the clerk one copy of the whole of the pleadings and of the particulars, if any, in the action for the use of the judge at the trial. [E. 454; O. 539; M. 556.]

Withdrawal  
by consent

576  
577

**186.** An action may be withdrawn from trial by either party upon producing a consent in writing signed by the other party or his solicitor but not otherwise except by order. [175; E. 287, 291; O. 543.]

Untried  
actions

**187.** Actions not tried or disposed of after being once entered for trial shall, unless otherwise ordered, remain for trial at the next sittings for the trial of similar actions at the place where such actions were entered. [O. 544 changed.]



CONDUCT OF TRIAL AND ADDRESSES TO JURY.

579 **188.** If, when an action is called on for trial, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim as far as the burden of proof lies upon him. [254; E. 455; O. 545.] Proof by plaintiff on non-appearance of defendant

580 **189.** If, when an action is called on for trial, the defendant appears and the plaintiff does not, the defendant, if he has no counterclaim, shall be entitled to judgment dismissing the action; but if he has a counterclaim he may prove such counterclaim as far as the burden of proof lies upon him. [255; E. 456; O. 546.] Plaintiff not appearing

581 **190.** The judge at the trial may if he deems it expedient order a witness, whether he be a party or not, to be excluded from the court until he is called to give evidence, and he may order a party to be examined before the other witnesses on his behalf; and any witness or party who disobeys such order shall be liable to be punished for contempt as the judge may direct and the judge may in his discretion exclude the testimony of any witness or party disobeying such order. [O. 547.] Exclusion of witnesses

585 **191.** Upon a trial with a jury the addresses to the jury shall be regulated as follows: Addresses to jury

(1) The party who begins shall be allowed to open his case to the jury and at the close of his case (if his opponent announces his intention not to adduce further evidence) to address the jury a second time for the purpose of summing up the evidence, and his opponent shall have the right to reply; but if his opponent announces his intention to adduce further evidence, he shall have the right to open his case and then to adduce such evidence as he may see fit and thereafter to sum up the evidence, and the party who begins shall have the right to reply.

(2) When a defendant claims a remedy over against a co-defendant, he shall have the right to address the jury after the co-defendant.

(3) When a party is represented by counsel, the right conferred by this Rule shall be exercised by his counsel. [259; E. 460; O. 548.]

**192.** In actions tried by a judge without a jury, if through accident or mistake or other cause a party omits or fails to prove some fact material to his case, the judge may proceed with the trial subject to such fact being afterwards proved at such time and subject to such terms and conditions as to costs and otherwise as the judge shall direct. [258; O. 549.] Proof of material fact left over

587 **193.** Damages in respect of any continuing cause of action shall be assessed down to the time of the assessment. [244; E. 482; O. 552.] Damages where cause of action continuing

589 **194.** The judge may postpone or adjourn a trial to such time and place and upon such terms as he shall think fit. [257; E. 458; O. 553.] Postponement or adjournment of trial

Delivery out  
of exhibits

593

**195.** Exhibits at the trial may be delivered out to the party whose property they are, at any time after judgment without any order, on the consent of the opposite party; or without such consent upon application on notice to the opposite party at any time after the time for appealing has expired, if no notice of appeal has been given.

Order for  
inspection

605

**196.** A party to a cause or matter may apply to the court or a judge for an order for the inspection by the jury or by himself or by his witnesses of any person or any real or personal property whose inspection may be material to the proper determination of the question in dispute, and the court or judge may make such order upon such terms as to costs and otherwise as the court or judge may think fit. [402 pt.; E. 661 pt.; O. 571.]

Inspection  
by judge

604

**197.** The judge by whom any cause or matter is tried with or without a jury or before whom any cause or matter is brought by way of appeal, may inspect any property or thing concerning which any question arises therein. [402; E. 660; O. 570.]

Evidence in  
mitigation of  
damage

485

**198.** In actions for libel or slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief with a view to mitigation of damages as to the character of the plaintiff without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence. [E. 461; O. 488.]

Disallowance  
of cross-  
examination

**199.** The judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious and not relevant to any matter proper to be inquired into in the cause or matter. [260; E. 462.]

Direction  
for entry of  
judgment

**200.** The judge shall, at or after trial, direct judgment to be entered without a motion for judgment or may adjourn the case for further consideration. [261; E. 463; O. 554.]

Setting aside  
of judgment  
obtained  
in absence  
of party

581

**201.** A verdict or judgment obtained when a party does not appear at the trial may be set aside by a judge upon such terms as may seem just upon an application made within fifteen days after the trial. [256; E. 457; O. 778.]

Disagreement  
of jury

**202.** If the jury disagrees and finds no verdict, the judge at or after the trial may notwithstanding dismiss the action. [O. 780.]

Answers of  
jury absent or  
conflicting

**203.** When the jury is asked to answer questions of fact and answers some but not all of them or the answers are conflicting so that judgment cannot be entered upon such findings, it shall not be necessary to move to set aside such findings, but the action may proceed as in the case of disagreement of a jury.



(2) Where the answers entitle a party to judgment as to some but not all of the causes of action, the judge may direct judgment to be entered as to those of the causes of action as to which the findings are sufficient to entitle the party to judgment and the action may, as to the remaining causes of action, proceed as in the case of a disagreement of a jury. [O. 781.]

SERVICE OUTSIDE THE JURISDICTION.

290 **204.** Service outside Alberta of any document by which any action, matter or proceeding is commenced against any person or of notice thereof, may be allowed by a judge whenever— Service outside jurisdiction

(a) The whole subject matter is land situated within Alberta, with or without rent or profits;

(b) Any act, deed, will, contract or obligation affecting land situated within Alberta is sought to be construed, rectified, set aside or enforced;

(c) Any relief is sought against any person domiciled or ordinarily resident within Alberta;

(d) The proceeding is for the administration of the estate of any deceased person who at the time of his death was domiciled within Alberta or for the execution (as to property situated within Alberta) of the trusts of a written instrument of which the person to be served is a trustee, which ought to be executed according to the law of Alberta;

(e) The action is founded upon a judgment of any court of Alberta or of the Supreme Court of the North-West Territories or on a breach within Alberta of a contract, wherever made, which, according to its terms, ought to be performed within Alberta;

(f) An injunction is sought as to anything done or to be done within Alberta or any nuisance within Alberta is sought to be prevented or removed, whether damages are or are not claimed in respect thereof;

(g) A person out of Alberta is a necessary or proper party to an action properly brought against another person duly served within Alberta;

291 (h) The proceeding is for any other matter and it appears to the satisfaction of the judge that the person initiating the same has a good cause of action upon a judgment, or for alimony, or in respect of a tort committed within Alberta, and that the person against whom the proceeding is initiated has assets in Alberta of the value of \$200 at least which may be rendered liable for the satisfaction of any judgment or order pronounced in the proceeding; but in such case, if no defence is filed, no judgment shall be entered except by leave of a judge and upon such conditions and in such manner as may seem proper. [18; E. 64; O. 162.]

**205.** Every application for leave to serve any such document or to give notice thereof out of Alberta shall be supported by affidavit or other evidence stating that in the belief of the Documents in support of application

deponent the applicant has a right to the relief claimed and showing in what place or country the person to be served is or probably may be found and the grounds upon which the application is made; and every order allowing such service shall limit the time within which such proceeding shall be answered or opposed and in limiting such time regard shall be had to the place where service is to be effected. [19 & 20; E. 67 & 68; O. 163 & 164.]

Applications in  
proceedings to  
be by motion  
447

**206.** Where an application is authorized to be made to the court or a judge in any action or proceeding, such application shall be made by motion. [458; E. 696; O. 355; M. 428.]

No summons,  
rule or order  
to show cause.  
Notice of  
motion  
447

**207.** No summons, rule or order to show cause shall be granted in any cause or matter; but when any person other than the applicant is entitled to be heard on a motion he shall be served with notice thereof, but no notice of motion shall, except by leave of a court or judge, be given after the expiration of one year from the time when the party desiring to give such notice first became entitled so to do. [E. 697 & 698; O. 356; M. 429.]

**208.** Where by any Statute or Ordinance any application is authorized to be made by summons such application may be made by notice of motion.

*Ex parte*  
order  
447

**209.** If satisfied that no notice is necessary or that the delay caused by proceeding by notice of motion might entail serious mischief, the court or a judge may make an order *ex parte* upon such terms as may seem just. [458; E. 698; O. 357; M. 430.]

Rescission,  
etc., of order  
451

**210.** A party affected by an *ex parte* order or any party who has failed to appear on an application through accident or mistake or insufficient notice thereof, may move to rescind or vary the order before the judge or officer who made the same or any judge or officer having jurisdiction within four days from the time the order has come to the notice of such party or within such further time as the court or a judge may allow and whether the order has been acted upon by the party issuing it or not. [E. 739; O. 358.]

All proper  
parties not  
served  
446

**211.** If on hearing of a motion or other application it appears that any person to whom notice has not been given ought to have had notice, the court or judge may either dismiss the motion or application or adjourn the hearing thereof in order that notice may be given upon such terms as may seem just. [461; E. 701, 762b & 768; O. 360; M. 432.]

Determination  
of preliminary  
question  
466

**212.** When on any application it appears to the judge desirable that any question of law or fact should be first determined before dealing further with the application, the judge may direct such question to be first argued or determined upon such terms as to costs, adjournment and otherwise as he deems proper and upon the determination of such question the judge may either finally dispose of the application or proceed with a further hearing thereof, as may be proper. [463.]



213. The plaintiff may without leave serve a notice of motion for an injunction and may, by leave of a judge to be obtained *ex parte*, serve any other notice of motion upon any defendant with the statement of claim or at any time after the service of the statement of claim and before the time limited for defence of such defendant; and any notice of motion may be served on the plaintiff by the defendant at any time after the issue of the statement of claim and either before or after the defence. [465; E. 704; O. 361.]

Service with claim or before time for filing defence

214. A notice of motion to set aside any proceeding for irregularity must specify clearly the irregularity complained of and the several objections intended to be insisted upon. [540; E. 1039; O. 362.]

Irregularity to be stated in notice

215. An order simply directing or giving leave for the doing of any act by an officer of the court other than a barrister or solicitor need not be issued unless a judge so directs, but the production of a note or memorandum signed by a judge shall be sufficient authority for such act. [468; E. 709.]

Memorandum authorizing act by officer of court

216. Before any motion is made for interim alimony or costs the plaintiff shall serve notice on the defendant of the amounts demanded by her, specifying the time and place for payment thereof, and the defendant may give notice in writing that he submits to pay the interim alimony and costs so demanded by the plaintiff; and in that case no order shall be taken out until there has been a default in payment; and in case of default, upon affidavits being filed verifying the statement of claim, the notice of admission and the default, an order for the payment of the sum demanded shall be issued on *praeceipe*. [O. 370.]

Defendant may notify plaintiff that he submits to pay interim alimony claimed or less sum

217. The defendant may give notice in writing that he submits to pay such less sum as he may deem proper and may name in his notice; and in the event of the plaintiff accepting the same the defendant shall thereafter pay the sum so offered as interim alimony and no order shall be taken out until there has been a default in payment. Where the plaintiff does not accept the amount offered and the same is found to be reasonable upon a motion for interim alimony, no order shall be taken out until there has been a default in payment. [O. 370.]

#### SPECIAL CASE.

218. The parties to any cause or matter may at any stage thereof, and the parties to any dispute before any proceedings have been instituted may, by leave of a judge, concur in stating the questions of law arising therein in the form of a special case for the opinion of the court. [250; E. 398 pt.; O. 372.]

Parties may concur in stating special appeal from judge

219. Every such special case shall be divided into paragraphs numbered consecutively and shall concisely state such facts as may be necessary to enable the court to decide the questions raised thereby. [250 pt.; E. 389 pt.]

Form and contents of special case

Agreement  
as to specific  
relief

464  
464  
467

**220.** Any agreement for a special case shall be signed by the parties or their solicitors and shall be filed by the plaintiff and such agreement may provide that on the judgment of the court being given in the affirmative or negative of the question or questions of law raised, certain specific relief may be given and the court may give judgment for such relief accordingly with or without costs as the parties may agree. [253; E. 391 & 394; O. 372 & 374.]

Power to draw  
inferences

465

**221.** Upon the argument of the case the whole contents of any documents referred to in the case may be read and the court may draw from the facts stated in the case and the documents therein referred to any inference whether of fact or law as at a trial. [250 pt.; E. 389 pt.; O. 372.]

Persons under  
disability

468

**222.** No judgment shall be given in a special case to which an infant or person of unsound mind is a party unless the court or judge is satisfied of the truth of the statements in such special case contained so far as the same affects the interests of such infant or person of unsound mind. [252; E. 392; O. 375.]

Preliminary  
question of law

466

**223.** If it appears that there is in any action or matter a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried or before any reference is directed, the court or a judge may make an order accordingly and may, if necessary, direct the mode in which such question shall be raised and may, if necessary, stay other proceedings. [251; E. 390; O. 373.]

Settlement  
of issues

344

**224.** Where it appears to a judge that the pleadings do not sufficiently define the issues of fact he may direct the parties to prepare issues; or, in the event of difference between the parties, may settle the issues to be tried, and may give such directions as may be necessary for the trial thereof. [232; E. 380; O. 376.]

#### ORDER FOR DIRECTIONS.

Time of  
application

**225.** In every action in which a statement of defence or an issue has been delivered, unless the defendant has already made application the plaintiff shall apply to a judge upon two clear days' notice returnable within eight days for an order for directions.

(2) The notice may be given at any time after the delivery of the statement of defence or the issue.

(3) No step shall be taken by the plaintiff after the close of the pleadings or the delivery of the issue and before the motion for directions without the leave of a judge other than an application for an injunction, or for attachment or for a receiver.

(4) The motion for directions may be made by a defendant at any time after the delivery of the statement of defence or issue and before notice of such motion has been given by the plaintiff. [E. 336.]



**226.** Upon the hearing of the motion any party who has been served with notice thereof shall, so far as practicable, apply for any order or directions as to any interlocutory matter or thing in the action which he may desire; and any application by any party which might have been so made shall, if granted on any subsequent application, be granted at the cost of the party applying therefor unless otherwise ordered by the court or a judge. [E. 338 & 340.] Subsequent applications

**227.** No affidavit shall be used on the hearing of the motion except by leave of a judge. [E. 337.] Affidavits, when used

**228.** Upon the hearing of the motion the judge shall as far as practicable make such order as may be just and necessary with respect to all the proceedings to be taken in the action and as to the costs thereof, and more particularly with reference to the following matters: Security for the claim or part thereof or for costs, pleadings, particulars, admissions, discovery or inspection of documents, inspection of real or personal property, examinations for discovery, commissions, examination of witnesses, time, place and mode of trial, issues to which the evidence at the trial is to be directed. [E. 336 A.] Matters dealt with

**229.** The judge shall have power having regard to the statements made by the parties or their solicitors upon the hearing of the motion— Power of judge

(a) To give such judgment, final or interlocutory, and dispose of all or part of the matters in dispute as may seem just, upon such terms as to execution or otherwise as he shall see fit;

(b) To direct that any fact may be proved, either for the purposes of the motion or at the trial, by affidavit, by statement upon oath of information and belief, or other secondary evidence, by the production of books of account or other books or documents or copies thereof or otherwise as he may see fit;

(c) To settle issues, take or direct the taking of accounts or make or direct the making of inquiries;

(d) To direct any party to admit for the purpose of the action any fact which he thinks should be admitted upon such terms as to witnesses who would, in the absence of such admission, require to be called by any party, being produced at the trial by such party for cross-examination or otherwise as he may see fit;

(e) To exercise such powers as may be necessary to ascertain the real questions in issue, to expedite their determination and to do complete justice between the parties. [E. 341.]

**230.** If the plaintiff or one of the plaintiffs, if more than one, do not within fourteen days after the pleadings are closed apply for directions, the defendant or any defendant shall be at liberty to apply for an order to dismiss the action, and upon such application the judge may either dismiss the action on such terms as may be just or may deal with such application in all respects as if it were a motion for directions. [E. 342.] Failure of plaintiff to apply for directions

Subsequent  
applications

**231.** Any of the parties may apply subsequently to the original motion for directions as to any interlocutory matter or thing on two clear days' notice to the other party stating the grounds of the application and upon such subsequent application the judge shall have the same powers and jurisdiction as upon the original motion. [E. 339.]

Non-compliance  
with directions

**232.** If any party fails to comply with any order made on motion for directions he shall be liable, if a plaintiff, to have his action dismissed, and, if a defendant, to have his defence struck out.

#### CONSOLIDATION OF ACTIONS.

Consolidation  
of actions

**233.** When there are actions or matters involving common facts or circumstances or between common parties, a judge may, whenever it appears just and convenient so to do, order that such actions or matters be consolidated or that some one or more of them be stayed pending the trial of the other or others, or that some or all of them or of the issues therein be tried together.

#### EXAMINATION FOR DISCOVERY.

Examination  
for discovery

**234.** A judge may order any party to an action, or any person who is or has been employed by any party to an action and who appears to have some knowledge touching the questions in issue acquired by virtue of such employment, whether such party or person be within or without the jurisdiction, to be orally examined before the trial touching the matter in question by any person adverse in interest. [201; E. 343; O. 439.]

Party benefited  
and member  
of firm

**235.** A member of a firm which is a party and a person for whose benefit an action is prosecuted or defended shall be regarded as a party for the purposes of examination. [202; O. 440.]

Assignor of  
*chose in*  
action  
examinable

**236.** Where an action is brought by an assignee of a *chose in action* the court or a judge may order the assignor to be examined for discovery. [O. 441.]

Subpoena and  
appointment

**237.** The party or person entitled to examine another party or person may procure an appointment for such examination from the clerk of the court in whose office the proceedings are being carried on or from such other person as the judge may appoint; and the party or person to be examined upon being served with a copy of the appointment and upon payment of the proper conduct money shall attend thereon and submit to examination; and the party examining shall serve a copy of the appointment upon the solicitor in the cause, at least forty-eight hours before the examination. [204 & 205; O. 443.]

Service  
on solicitor  
for client

(a) Unless a judge otherwise directs, service of an appointment upon the solicitor of the party to be examined shall be sufficient in lieu of personal service of appointment upon such party if made twenty days before the day appointed for the examination.



401 (b) If any party attending for examination pursuant to an appointment so served demand his conduct money, it shall be paid to him forthwith upon such demand by the solicitor by whom the appointment was served. [O. 447.] Demand of conduct money

404 **238.** Unless a judge otherwise directs the party or person to be examined shall if so required by notice produce at the examination all books, papers and documents which he could be required to produce at the trial. [207; O. 448.] Production of papers

**239.** If a witness produce books, papers or documents and refuses for good cause, to be stated in his deposition, to part with the original, then a copy or extract certified by the examiner or commissioner to be a true and correct copy or extract shall be annexed to the deposition of the witness. [208; O. 508.] Copies as evidence

**240.** Anyone examined orally under these Rules may give further evidence or be further examined in explanation of any matter in respect of which he has already been examined. [209 & 211; O. 451.] Mode of conducting examination

409 **241.** Anyone who admits upon his examination that he has in his custody or power any book, paper, or document relating to the matters in question in the cause not privileged or protected from production, shall produce the same for the inspection of the party examining him upon the order of a judge or upon the direction of the officer before whom he is examined within a reasonable time to be fixed by the order or direction. [212; O. 452.] Person admitting possession of documents may be ordered to produce

409 **242.** The direction of the officer shall be subject to appeal; and he shall upon request certify under his hand the question raised and the direction made thereon. [213; O. 453.] Officer's order for production appealable

410 **243.** Anyone refusing or neglecting to attend at the time and place appointed for his examination or refusing to be sworn or to answer any question properly put to him or to produce any document which he is bound to produce, shall be deemed guilty of a contempt of court and proceedings may be had against him by attachment. He shall also be liable, if a plaintiff, to have his action dismissed, and, if a defendant, to have his defence, if any, struck out. Penalty for refusal to attend or answer, etc.

(2) If the person so refusing or neglecting is an officer of a corporation, a party to action or one who is employed by a party, the party, if a plaintiff, shall be liable to have his action dismissed, and, if a defendant, to have his defence struck out, unless the judge is satisfied that the refusal or neglect is one for which the party ought not to be held responsible. [214; O. 454.]

412 **244.** Unless taken in shorthand the depositions on an oral examination as aforesaid may be taken down in writing by the examiner in the form of a narrative expressed in the first person and when completed shall be read over to the person examined Depositions, how to be taken down

and shall be signed by him in the presence of the parties or such of them as may think fit to attend and shall be certified by the examiner.

Signing  
depositions 413

(2) When anyone examined refuses or is unable to sign the depositions, the examiner shall so certify.

Taking down  
questions 414

(3) The examiner may upon any examination under this Rule in his discretion take down any particular question or answer and he shall upon request note upon the depositions any questions objected to and the ground of the objection. [216, 217 & 218; E. 494; O. 456 (1), (2) & (3).]

Examination  
may be taken  
in shorthand

**245.** In case of an examination before, or otherwise than at, the trial, if the examining party desires to have such examination taken in shorthand, he shall unless otherwise ordered by a judge be entitled to have it so taken by the examiner or by a shorthand writer approved and duly sworn by such examiner, or by an official court reporter. [219; O. 457.]

(2) If the examination is taken by an official court reporter it shall not be necessary for the clerk to be present at the examination.

Examinations,  
how to be taken  
in shorthand

416

**246.** When taken in shorthand the examination shall be taken down by question and answer with a note of any refusal to answer and the reason, if any, therefor; and unless otherwise ordered or unless any party so desires, it shall not be necessary for the depositions to be read over to or signed by the person examined.

Certified copy  
to be deemed  
to be original  
depositions

(2) The depositions so taken, when extended and certified by the person taking the same as correct, and (if such person be not the examiner) also signed by the examiner, shall be deemed to be the original depositions. [220; O. 458 (1); 221; O. 458 (2).]

Objection  
to questions

411

**247.** The validity of any objection to any question shall be decided by the court or a judge; and the costs of and occasioned by such objection shall be in the discretion of the court or judge; and may be ordered to be paid by the person under examination. [215; E. 496; O. 455.]

Depositions  
to be returned  
to court

417

**248.** The depositions shall at the request of any party interested and upon payment of the examiner's fees be filed in the office of the court in which the proceedings are being carried on and the depositions, signed and certified as hereinbefore provided, when duly filed or a copy thereof certified under the hand of the proper officer shall without proof of the signature be received and read in evidence, saving all just exceptions. [222; E. 498; O. 459.]

Special report  
of examiners  
to the court

418

**249.** The person taking an examination may and, if need be, shall make a special report to the court, in which proceedings are pending, touching such examination and the conduct or absence of any person, and the court may direct such proceedings and make such order upon such report as justice may



require and as may be directed and made in any case of a contempt of court. [223; E. 499; O. 460.]

419 **250.** Any party to an action or issue may at the trial use in evidence as against any opposite party any part of the examination of such opposite party, or in case such opposite party is a corporation, of the examination of any officer thereof selected to submit to an examination to be so used. Use of depositions as evidence

420/1. (2) Such selection shall be made by the corporation, or by a judge if the corporation refuses or fails to select any or what the judge considers the proper officer or officers having regard to the questions involved. Officer of corporation

(3) If it be made to appear at or before the trial that any party has been unable after due diligence to obtain the attendance at the trial of any person examined by him for discovery, or if for any other reason it appears to be just and convenient, the court or a judge may permit such party to use in evidence the whole or any part of the examination of such person.

(4) If part only of any examination be used, the judge may at the request of any party against whom it is so used direct that any other part of the examination be also used, if it is so connected with the part so used that such first mentioned part ought not to be used without such other part. [224; E. 363; O. 461.] Part of examination used

**250a.** The costs of examination for discovery shall be borne by the party examining, unless the judge otherwise orders.

MEDICAL EXAMINATION.

422 **251.** In any action brought to recover damages or other compensation for or in respect of bodily injury sustained by any person, the court or a judge or any person who by consent of the parties, or otherwise, has power to fix the amount of such damages or compensation, may order that the person in respect of whose injuries, damages or compensation are or is sought shall submit to be examined by a duly qualified medical practitioner, who is not a witness on either side, and may make such order respecting such examination and the cost thereof as he may think fit. The medical practitioner named in such order shall be selected by the court or judge or other person making the order and may afterwards be a witness on the trial, unless the judge before whom the action is tried otherwise directs [O. 462.] Medical examination in action in respect of bodily injury

STRIKING OUT PLEADINGS, ETC.

3m. **252.** If upon the hearing of a cause or matter, the court is of opinion that any pleading, petition or affidavit or any part of a pleading, petition or affidavit, is scandalous, the court may order the pleading, petition or affidavit to be taken off the file or may direct the scandalous matter to be expunged and may give such directions as to costs as may seem just. [E. 531; O. 296.] Expunging scandalous matter

346  
**253.** A motion to have any pleading, petition or affidavit taken off the files for scandal or to have the scandalous matter expunged may be made to a judge at any time before or at the hearing of the cause or matter. [O. 297.]

347  
**254.** A judge may at any stage of the proceedings order to be struck out or amended any matter in the pleadings respectively which may be scandalous or may tend to prejudice, embarrass or delay the fair trial of the action. [127; E. 223; O. 298.]

Striking out pleadings, frivolous or disclosing no cause of action

347  
**255.** The court or judge may order any pleading to be struck out on the ground that it discloses no cause of action or answer, or that it is frivolous or vexatious, and may order the action to be stayed or judgment to be entered as may be just. [157; E. 284; O. 261.]

Further and better statement and particulars may be ordered

326  
**256.** A further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleading, notice or written proceeding requiring particulars, may in all cases be ordered upon such terms as to costs and otherwise as may seem just. Such statement or particulars shall be filed and attached to the pleading, notice, or writing to which the same refers or refer (as the case may be). [112; E. 203; O. 299.]

#### AMENDMENT OF PLEADINGS.

Application for leave to amend

**257.** A judge may at any stage of the proceedings allow either party to alter or amend his pleadings or other proceedings in such manner and on such terms as may be necessary for the purpose of determining the real question in controversy between the parties. [178; E. 305; O. 304.]

Amendment of defects or errors

365  
**258.** A judge may at any time, and on such terms as to costs or otherwise as he may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings. [189; E. 316; O. 312.]

Amendment by plaintiff without leave

344  
**259.** The plaintiff may without any leave amend his statement of claim once at any time before the expiration of the time limited for reply and before replying. [179; E. 310; O. 300.]

Amendment of counterclaim

349  
**260.** A defendant who has set up any counterclaim may without any leave amend such counterclaim at any time before the expiration of the time allowed him for answering the defence to the counterclaim and before such answer. [180; E. 307.]

Disallowance of amendment

**261.** Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may within eight days after the delivery to him of the amended pleading apply to a judge to disallow the amendment or any part thereof and the judge may, if satisfied that the justice of



the case requires it, disallow the same or allow it subject to such terms as to costs or otherwise as may be just. [181; E. 308; O. 301.]

350 **262.** Where any party has amended his pleading under Rule 259 or Rule 260, the opposite party shall plead to the amended pleading or amend his pleading within eight days from the delivery of the amendment; and in case the opposite party has pleaded before the delivery of the amendment and does not plead again or amend within the time above mentioned he shall be deemed to rely upon his original pleading in answer to such amendment. [182; E. 309; O. 302 (cf).]

Pleading to or amendment by the other party after amendment

351 **263.** If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order or, if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall on the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, become inoperative unless the time is extended by the court or a judge. [184; E. 311; O. 305.]

Failure to amend within time

**264.** Any party may amend his pleadings at any time without order on filing the written consent of the opposite party or his solicitor. [O. 303.]

Amendment by consent

354 **265.** A pleading may be amended by written alterations in the copies filed and served or by additions on paper to be interleaved therewith if necessary unless the amendments require the insertion of more than 200 words in any one place or are so numerous or of such a nature that making them in the copies filed and served would render the same difficult or inconvenient to read; in either of which cases the amendments shall be made by delivering a reprint or fresh copy of the pleadings as amended. [185; E. 312; O. 306.]

Method of making alterations

355 **266.** Where a pleading is amended it shall be marked by the clerk of the court with the date upon which such amendment is made and of the order or consent, if any, under which the same is so amended, in the manner following:

Marking of amended pleadings

"Amended.....day of.....(under order [*or* consent] dated.....day of.....)."

(2) The amendment shall be written or underlined in ink of a different colour from that used in the original pleading. [186; E. 313; O. 307.]

356 **267.** The amended pleading shall be delivered within the time allowed for amending the same. [187; E. 314; O. 308.]

Delivery of amended pleadings

357 **268.** Where an amendment is directed or allowed at the trial it shall not be necessary to issue an order therefor. The amendment unless otherwise directed, shall be made forthwith in the record. [O. 314.]

Amendment at trial

No physical  
alteration of  
record, etc.

**269.** Where an amendment of any record of the court or document filed, other than a pleading, is directed, no physical alteration of the record or document shall be made, but a note shall be made in the margin or other convenient place of the amendment directed. [O. 315.]

Correction  
of clerical  
mistakes in  
judgments, etc.

**270.** Clerical mistakes in judgments or orders or errors arising therein from any accident, slip or omission may at any time be corrected by the court or a judge on motion. [188; E. 315; O. 640.]

Costs of  
amendment

**271.** The costs, if any, occasioned by any amendment shall be borne by the party making the same unless the court or a judge shall otherwise order. [190; E. 317.]

Defect of form  
not to defeat  
proceedings

**272.** No pleading or other proceeding shall be defeated by any technical objection on the ground of an alleged defect of form. [126; E. 222; O. 309.]

Effect of  
non-compliance  
with Rules

**273.** Unless the court or a judge so directs, non-compliance with the Rules shall not render any act or proceeding void, but the same may be set aside either wholly or in part as irregular or amended or otherwise dealt with as to the court or judge may seem just. [538; E. 1037; O. 310.]

Time for  
proceeding  
to set aside

**274.** An application to set aside process or proceedings for irregularity shall be made within a reasonable time and shall not be allowed if the party applying has taken a fresh step after knowledge of the irregularity. [539; E. 1038; O. 311.]

#### LEAVE TO SIGN JUDGMENT AND DEFEND.

Signing final  
judgment for  
liquidated  
demand

**275.** When a statement of claim includes a claim for a debt or liquidated demand and any defendant has delivered a defence, the plaintiff may on affidavit made by himself, or any other person who can swear positively to the facts, verifying the cause of action in respect of the debt or liquidated demand and the amount claimed and stating that in his belief there is no defence thereto, apply to a judge for leave to enter final judgment for the amount so verified together with interest, if any, and costs. [103 pt.; E. 115 pt.; O. 603 pt.]

**276.** Upon the hearing of the motion, unless the defendant by affidavit or his *viva voce* evidence or otherwise shall satisfy the judge that he has a good defence to the action on the merits or disclose such facts as may be deemed sufficient to entitle him to defend or shall bring into court the amount verified, the judge may direct that judgment be entered accordingly; but such judgment shall be without prejudice to the plaintiff's right to proceed against any other defendant or in respect of any other cause of action included in the statement of claim. [103 & 105 pt.; E. 115 & 117 pt.; O. 603 pt.]

(a) If the defendant shows cause by affidavit, the affidavit shall state whether the defence alleged goes to the whole or part only and, if so, to what part of the plaintiff's claim.



(b) The judge may, if he thinks fit, order the defendant or, in the case of a corporation, any present or past officer thereof to attend and be examined upon oath or to produce any books or documents or copies thereof or extracts therefrom. [105 pt.; E. 117 pt.]

627 **277.** If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim or that any part of his claim is admitted, the judge may, if the circumstances make it convenient, direct that the plaintiff have judgment forthwith for or in respect of such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution or the payment of the amount levied or any part thereof into court by the sheriff, the taxation of costs or otherwise as the judge may think fit; and the defendant may be allowed to defend as to the residue of the plaintiff's claim. [106; E. 118; O. 604.] Defence as to part

628 **278.** If it appears to the judge that any defendant has a good defence to or ought to be permitted to defend the action and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend; and the judge may, if the circumstances make it convenient, direct that the plaintiff have judgment against the latter and the plaintiff may enforce such judgment without prejudice to his right to proceed with his action against the former. [107; E. 119; O. 605.] Judgment against one defendant not to prejudice other defendants

630 **279.** If it appears that the defence disclosed is substantially only as to the amount recoverable, the judge may make an order directing a reference to ascertain the amount and may reserve further directions and questions of cost for the consideration of a judge. [O. 607.] Reference, where defence only as to amount

629 **280.** Leave to defend may be given unconditionally or subject to such terms as to giving security or time or mode of trial or otherwise as the judge may think fit. [108; E. 120; O. 606.] Leave to defend, absolute or conditional

**281.** Where leave, whether conditional or unconditional, is given to defend, the judge shall have power to give all such directions as to the further conduct of the action as might be given on a motion for directions and may order the action to be forthwith set down for trial. [E. 120 (b) pt.]

**282.** The cost of the application, if not dealt with by the judge on the hearing of the application or if referred to the judge at the trial and no trial afterwards takes place or no order as to costs is made, shall be costs in the cause. [E. 120 (c).] Costs of application for leave to defend

629 **283.** Where at any time after the statement of claim has been issued it is made to appear to a judge on an *ex parte* application that it will be conducive to the ends of justice to permit a notice of motion for judgment to be forthwith served, the judge may order the same accordingly and, when such permission is granted, the judge is to give such directions as to the Motion for judgment by leave after delivery of statement of claim

service of the notice of motion and affidavits as may be expedient.

(2) Upon the hearing of such motion the judge instead of either granting or refusing the application may give such directions for the examination of either parties or witnesses or for the making of further enquiries or with respect to the further prosecution of the suit as the circumstances of the case may require and upon such terms as to costs as the judge may think right. [326; O. 608.]

Summary  
judgment upon  
admissions in  
pleadings, etc.

**284.** A party may at any stage of a cause or matter, without waiting for the determination of any other question between the parties, apply to a judge for such judgment or order as he may be entitled to—

(a) Where admissions of fact have been made on the pleadings or otherwise; or,

(b) Where the only evidence consists of documents and such affidavits as are necessary or sufficient to prove the execution or identity of such documents—

and the judge may on such application make such order or give such judgment as he may think just. [220; E. 376; O. 616.]

Application  
turned into  
motion for  
judgment  
on hearing

**285.** Where it is made to appear on the hearing of any application that it will be conducive to the ends of justice to permit it, the judge may direct the application to be turned into a motion for judgment or a hearing of the cause or matter; and may make such order as to the time and manner of giving the evidence in the cause or matter and with respect to the further prosecution thereof as the circumstances of the case may require; and upon the hearing it shall be discretionary with the judge to either pronounce a judgment or make such order as may seem just. [325; O. 611.]

Action  
involving  
account

**286.** In an action for an account or in any action where it appears that the matters in question involve the taking of an account, the plaintiff may move for such judgment as he may be entitled to and the judge upon such motion may direct the taking of an account unless he is of opinion that there is some preliminary question to be tried which cannot conveniently be determined upon such action. [234 pt.; E. 121; O. 645 pt.]

Judgment where  
defence filed for  
delay only

**287.** In any action in which a defence has been filed the plaintiff may on affidavit made by himself, or any other person who can swear positively to the facts, verifying the cause and stating that in his belief the defendant has no defence to the action on the merits and that the defence has been filed for the purpose of delay only, move for such judgment as he may be entitled to, and unless the defendant by affidavit or otherwise shall satisfy the judge that he has a good defence or counterclaim on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend or counterclaim, the judge may direct such judgment to be entered for the plaintiff as he may be entitled to.



636 **288.** Where issues have been ordered to be tried or issues or questions of fact to be determined in any manner, the plaintiff may give notice of motion for judgment as soon as such issues or questions have been determined. If he does not give such notice to the other parties within ten days after his right so to do has arisen, then, after the expiration of such ten days, any defendant may move for judgment on notice to the other parties. [321; E. 565; O. 613.] Judgment after trial of issues

637 **289.** Where issues have been ordered to be tried or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary or renders it desirable that the trial or determination thereof should be postponed, may apply to a judge for leave to serve a notice of motion for judgment without waiting for such trial or determination; and the judge may, if satisfied of the expediency thereof, give such leave upon such terms, if any, as shall appear just and give any directions which may appear desirable as to postponing the trial of the other issues of fact. [332; E. 566; O. 614.] Judgment after trial of some issues

**290.** When in any action accounts, inquiries or issues have been directed, either party may at any time after such questions have been determined move for judgment by way of further consideration of the action. Motion for judgment by way of further consideration

631 **291.** Except when it is provided that judgment may be obtained in any other manner, judgment may be obtained by motion for judgment. [317; E. 559; O. 609.] How judgment obtained

638 **292.** Upon a motion for judgment the court may draw all inferences of fact not inconsistent with the finding of the jury and, if satisfied that it has before it all the materials necessary for finally determining the questions in dispute or any of them, or for awarding any relief sought, may give judgment accordingly, or may, if it shall be of opinion that it has not sufficient material before it to enable it to give judgment, direct the motion to stand over for further consideration and direct such issues or questions to be tried or determined and such accounts and inquiries to be taken and made as it may think fit. [324; E. 568; O. 615.] On motion for judgment final judgment may be given by court

#### INQUIRIES AND ACCOUNTS.

639 **293.** The court or a judge may at any stage of the proceedings in a cause or matter direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried as to which it may be proper that the cause or matter should proceed in the ordinary manner. [233; E. 381; O. 646.] Inquiries or accounts at any stage

Direction as  
to mode of  
taking accounts  
and as to books  
of account being  
*prima facie*  
evidence

**294.** The court or judge may either by the judgment or order directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objections thereto as they may be advised. [235; E. 382; O. 674.]

Form of  
accounts

**295.** Where any account is directed to be taken, the accounting party, unless the court or judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively and the account shall be referred to in the affidavit as an exhibit and be filed with the clerk or other referee as the case may be. [236; E. 383; O. 673.]

Production  
of vouchers

**296.** Upon the taking of any account the court or a judge may direct that the vouchers shall be produced at the office of the solicitor of the accounting party or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the judge in chambers. [237; E. 383 (a).]

Notice of  
particulars  
of charge

**297.** Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short or succinct manner. [238; E. 384; O. 680.]

Inquiry as to  
outstanding  
estate of  
deceased persons

**298.** Every judgment or order for a general account of the estate of a deceased person shall contain a direction for an inquiry as to what parts, if any, of such estate are outstanding or undisposed of, unless the court or judge shall otherwise direct. [239; E. 385.]

Numbering of  
directions

**299.** Where by any judgment or order whether made in court or in chambers any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number. [240; E. 386.]

Just  
allowances

**300.** In taking any account directed by any judgment or order all just allowances shall be made without any directions for that purpose. [241; E. 387; O. 667 (e).]

Delay in  
accounts to  
be explained

**301.** If it shall appear to the court or a judge that there is any undue delay in the prosecution of any accounts or inquiries or in any other proceedings under any judgment or order, the court or judge may require the party having the conduct of the proceedings or any other party to explain the delay and may thereupon make such order with regard to expediting the proceedings or the conduct thereof or the stay thereof, and as



to the costs of the proceedings as the circumstances of the case may require; and for the purposes aforesaid any party may be directed to summon the persons whose attendance is required and to conduct any proceedings and carry out any directions which may be given. [242; E. 388; 794-797.]

**302.** Where any cause or matter or any question in any cause or matter is referred to a referee, he may subject to the order of the court or a judge hold the inquiry at or adjourn it to any place which he may deem most convenient and have any inspection or view which he may deem expedient for the better disposal of the matters before him. [E. 472 pt.; O. 649.]

Inquiry before referee

**303.** Subject to any order to be made by the court or judge ordering the same, evidence shall be taken at any inquiry before a referee and the attendance of witnesses may be enforced and in other respects the proceedings shall be conducted in the same manner as nearly as circumstances will admit as trials before a judge. [E. 473; O. 484 & 650.]

Conduct of inquiry before referee

**304.** Nothing in these Rules contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise, or to direct judgment to be entered unless expressly authorized so to do by the order of reference. [E. 475.]

Referee not to commit, attach or direct entry of judgment

**305.** The referee may, before the conclusion of any inquiry before him, or by his report under the reference made to him, submit any question arising therein for the decision of the court or a judge, or state any facts specially from which the court or judge shall have power to draw inferences; and the court or judge shall have power to require any explanations or reasons from the referee and to remit the cause or matter or any part thereof for further consideration to the same or any other referee; or the court or judge may decide the question referred to any referee on the evidence taken before him either with or without additional evidence as the court may decide. [E. 476; O. 651 & 652.]

Submission of questions by referee

Decision upon or remission of matter by judge

**306.** Whenever a report shall be made by a referee he shall forthwith file it in the office in which the proceedings are pending and on the same day cause notice of the filing thereof to be given to all the parties to the reference before him by prepaid post letter directed to the address for service of each party, who shall in due course of post be deemed to have had notice of such report. [E. 477.]

Notice of referee's report

**307.** Where the report of the referee has been made in a cause or matter, the further consideration of which has been adjourned, any party may on the hearing of such further consideration, without notice of motion, apply to the court or judge to adopt the report, or without leave of the court or a judge give notice of motion to come on with the further consideration to

Adoption of variation of report of referee where further consideration of cause has been adjourned

vary the report or to remit the cause or matter or any part thereof for further consideration to the same or any other referee. [E. 478.]

Same where  
further  
consideration  
of cause not  
adjourned

**308.** Where the report of the referee has been made in a cause or matter the further consideration of which has not been adjourned, any party may by notice of motion apply to the court to adopt and carry into effect the report of the referee or vary the report, or to remit the cause or matter or any part thereof for further consideration to the same or any other referee. [E. 479.]

Costs in  
discretion  
of referee

**309.** Where the whole of any cause or matter is referred to a referee under an order of court, he may subject to any directions in the order exercise the same discretion as to costs as the court or a judge could have exercised. [E. 479 (b).]

Unpaid fees may  
be ordered to  
be paid by  
solicitor

**310.** In any proceedings before a referee in which the party by whom the fees prescribed by the Rules as to court fees are payable is represented by a solicitor, if the fees or any part of the fees payable under the said Rules are not paid as therein prescribed, the court or a judge may upon the application of and upon a report signed by the referee stating the amount of the unpaid fees order the said solicitor of the said party personally to pay the said amount in the manner prescribed by the said Rules and to pay the costs of the application. [E. 479 (d).]

Ascertainment  
of damages  
where a matter  
of calculation

**311.** In every action or proceeding in the court in which it shall appear to the court or a judge that the amount of damages sought to be recovered is substantially a matter of calculation, the court or judge may direct that the amount for which final judgment is to be entered shall be ascertained by a referee; and the attendance of witnesses and the production of documents before such referee may be compelled by subpoena and he may adjourn the inquiry from time to time and shall endorse upon the order of reference the amount of damages found by him and shall deliver the order with such endorsement to the person entitled to the damages and such and the like proceeding may thereupon be had as to taxation of costs, entering judgment and otherwise as upon the direction for judgment by a judge. [243; E. 481.]

#### APPEALS.

Appeal from  
officers in  
chambers

**312.** A person affected by a judgment, order or decision of a local judge in chambers or a master or the certificate of a referee may appeal therefrom to a judge of the Supreme Court. [O. 767 (1).]

**313.** An appeal may be made notwithstanding that the judgment, order, decision or certificate was in respect of a proceeding or matter as to which the local judge had jurisdiction only by consent.



(2) The appeal shall be by motion on notice setting out the grounds of appeal, served within four days and returnable within fourteen days after judgment is pronounced, order made or decision or certificate given.

(3) When the judgment, order, decision or certificate is pronounced, made or given in vacation or within six days preceding vacation a person affected thereby may appeal therefrom during vacation by leave of a judge or may appeal after vacation in the same manner and within the same time as if the judgment, order, decision or certificate had been pronounced, made or given on the first day after such vacation. [O. 767 (2), (3) & (6).]

APPEALS FROM TAXING OFFICER.

681/2. **314.** A party dissatisfied with the certificate of a taxing officer may appeal to a judge to review the taxation as to any item or part of an item which has been objected to as provided for by the Rules respecting taxation, but the certificate of the taxing officer shall be final and conclusive as to all matters which have not been objected to as provided by the said Rules. [528; O. 773 & 774.] Review of taxation

**315.** The appeal shall be heard by the judge upon the evidence which was before the taxing officer, unless otherwise ordered. [529; O. 776.] Evidence thereon

APPEALS TO APPELLATE DIVISION.

673 **316.** In the following Rules relating to appeals unless the context otherwise requires the expression "appeal" shall include motions for a new trial or to set aside a finding or verdict of a judge or jury, and the expression "judge" shall not include a local judge or master in chambers; and the expression "court" shall mean the appellate division of the Supreme Court. Definition of "Appeal" and "Court"

**317.** No judgment given or order made by the court or a judge by the consent of parties or as to costs only which by law are left to the discretion of the court or judge shall be subject to any appeal, except by leave of the court or judge giving the judgment or making the order. [500; E. 49; O. 572.] Appeal from consent orders and discretionary costs orders

672 3/4. **318.** Except as otherwise provided an appeal shall lie to the court from the whole or any part of any judgment, order, direction or finding of a judge or a local judge sitting in court or the verdict or finding of a jury or from the judgment, order or direction of a judge sitting in chambers. [318, 319 & 320; E. 561, 562; O. 777.] Appeal from judge in court or chambers or jury

**319.** Where the matter in controversy in the appeal can be estimated in money and does not exceed the sum of \$200, exclusive of costs, no appeal shall lie without the leave of the court or a judge thereof. Appeal where matter does not exceed \$200

Appeal from  
refusal of  
*ex parte*  
application

**320.** The appeal in the case of the refusal of an *ex parte* application, when the refusal is for any other reason than the want of notice, shall be by way of renewal of the application to the court. [E. 874.]

Time for notice  
of appeal

**321.** Notice of appeal shall be given within twenty days in the case of a judgment, after the formal judgment or order has been signed and entered; in the case of an order, after the order has been signed and issued; in the case of a direction, after the judgment or order founded thereon has been signed and entered or issued; in the case of a finding or verdict, after the judgment or order founded thereon has been signed and entered or issued. [504; E. 867, 889 (e) pt., 889 (g).]

Time for  
application  
to set aside  
award

**322.** An appeal from or a motion to set aside or remit an award shall be to the court upon notice given unless otherwise provided within twenty days after the award has been made and published to the parties. [E. 974.]

Notice to state  
part appealed  
from and  
grounds

**323.** The notice of appeal shall state whether the whole or part only of the judgment, order, direction, finding, verdict or award is complained of and, in the latter case, what part thereof and shall specify the grounds of appeal. [503; E. 865 pt. 889 (e) pt.]

Amendment  
of notice  
of appeal

**324.** The notice of appeal may be amended at any time by leave of the court or a judge on such terms as may be deemed just. [505; E. 889 (k).]

Service of  
notice of  
appeal

**325.** The notice of appeal shall be filed with the clerk in whose office the proceedings have been carried on and shall be served upon all parties directly affected by the appeal and it shall not be necessary to serve parties not so affected; but the court may direct notice of the appeal to be served on all or any parties to the action or other proceeding or upon any person not a party and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just and may give such judgment or make such order as might have been given or made if the persons served with such notice had originally been parties. [506; E. 866; O. 815.]

**325a.** The Chief Justice of the Court or any judge duly assigned to the Appellate Division may in the name of the Appellate Division make any order in chambers in respect to any matter incidental to any appeal which the Appellate Division could make either *ex parte* or on such notice as to him may seem meet, and any such order may be set aside or varied by the judge making it or by the Appellate Division.

Amendments  
by court

**326.** The court shall have full discretionary power to direct any amendment of any proceeding before it and to receive further evidence upon questions of fact, such evidence to be either by oral examination in court, by affidavit or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory

Reception  
of further  
evidence



applications or, in any case, as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits such further evidence (save as to matters subsequent, as aforesaid) shall be admitted on special grounds only and not without special leave of the court. The court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said court notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The court shall have power to make such order as to the whole or any part of the costs of the appeal as may be just and in the event of the court not making any order as to costs by reason of being equally divided the costs shall follow the event of the appeal. [507; E. 868; O. 498 & 817.]

Further evidence on appeal from judgment

Power to draw inferences

Costs of appeal

**327.** Where on appeal the judgment of the court below is reversed and the judgment which is directed to be entered is one for a sum of money, such judgment shall bear interest from the date of the judgment reversed.

Money to bear interest from date of judgment reversed

**328.** If upon the hearing of an appeal it shall appear to the court that a new trial ought to be had, the court may, if it shall think fit, order that the verdict and judgment be set aside and a new trial had. [E. 869.]

Power to order new trial

**329.** A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the court to which application is made some substantial wrong or miscarriage has been thereby occasioned on the trial; and if it appears to such court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the court may give final judgment as to part thereof, or some or one only of the parties and direct a new trial as to the other part only or as to the other party or parties. [508; E. 556, 889 (a); O. 785.]

Restrictions on new trials

**330.** A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question. [509; E. 557; O. 786.]

New trial as to part

**331.** It shall not under any circumstances be necessary for a respondent to give notice of motion by way of cross-appeal, but if a respondent intends upon the hearing of the appeal to contend that the decision of the court below should be varied, he shall within the time specified in the next Rule, or such time

Cross-appeal unnecessary. Notice of intention sufficient

as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred upon the court but may, in the discretion of the court, be ground for an adjournment of the appeal or for a special order as to costs. [E. 870; O. 813.]

Notice to  
be an eight  
days' notice

**332.** Subject to any special order which may be made notice by a respondent under the last preceding Rule shall be given at least eight days before the commencement of the sittings at which the appeal is to be entered for argument. [E. 871; O. 801.]

Interlocutory  
order not  
to prejudice  
appeal

**333.** No interlocutory order from which there has been no appeal shall operate so as to bar or prejudice the court from giving such decision upon the appeal as may be just. [512; E. 878.]

Appeal, how far.  
Stay of  
execution or  
proceedings

677

**334.** An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from except so far as the court or judge or master appealed from, or any judge of the Supreme Court, may order; and no intermediate act or proceedings shall be invalidated except so far as the court appealed from may direct. [510 & 513; E. 755, 886, 889 (i); O. 827.]

No security for  
costs in appeals  
except under  
special  
circumstances

**335.** No security for costs shall be required in appeals unless by reason of special circumstances such security is ordered by a judge upon application to be made within fifteen days from the service of the notice of appeal. [502; E. 879 pt.; O. 825 & 826.]

Delivery of  
judgment

**336.** Any judge may deliver the judgment of the court when authorized to do so by the judges who heard the matter upon which judgment is to be pronounced and may deliver the judgment of any other judge when authorized to do so by such other judge, notwithstanding the absence of the judge or judges aforesaid. Judgment may be delivered at any time, whether at a sitting or otherwise. [516.]

Time for entry  
for argument

**337.** A judgment, order, decision, finding or verdict appealed from shall stand as if no notice of appeal had been made or given if such appeal be not entered for argument at latest for the first sittings which commence after the expiration of six weeks after such notice or if the appeal of which such notice has been given be not made when the cause or matter is called, unless the court at or after the said sittings otherwise order. [515.]

Appeal books

**338.** Unless otherwise ordered by a judge, on every appeal the party appealing shall, except in cases of appeals from orders made in proceedings in chambers, file a printed or typewritten copy of the pleadings, the judge's notes on trial or the evidence if taken in shorthand, the exhibits, the judgment delivered and the reasons therefor, if any, and the notice of the motion intend-



ed to be made; and in cases of appeals from orders made in proceedings in chambers, the party appealing shall file a printed or typewritten copy of the documents, evidence and other material used before the judge, the order made and the reasons therefor, if any, the notice of appeal, and in either case, if necessary, a certificate by the judge of any statements or admissions made upon the trial or hearing which the judge is of the opinion are material to the appeal.

(2) In any case in which any portion of the evidence or any exhibit or any portion thereto is immaterial to the questions involved in the appeal, the same shall be omitted.

(3) When no notes of the judge or evidence can be procured the court may hear and determine the appeal upon any other evidence or statement of what occurred before such judge which the court may deem sufficient. [E. 883 (a) & (b); 889 (b).]

**339.** Such printed or typewritten copy shall be known as the appeal book. It shall be intituled as follows:

"In The Supreme Court of Alberta:

"Between A. B., Plaintiff (Respondent) and

C. D., Defendant (Appellant) (*or as the case may be*).

"Appeal from the judgment of His Honour Judge....., judge of the District Court of....., (*or as the case may be*)."

Unless otherwise ordered by a judge, it shall be filed at least ten days before the opening of the sittings whereat the appeal is to be heard, after having been certified by the clerk of the court in which the proceedings were had, under the seal of such court, in the following form:

"In the Supreme Court of Alberta, Judicial District of.....

"I, the undersigned clerk of the Supreme Court of Alberta in and for the Judicial District of....., hereby certify to the registrar of the said court that the foregoing document is a true copy of the statement of claim and defence and the pleadings in this cause, the judge's notes taken on the trial as furnished by the judge (*or the evidence as furnished by the court stenographer, as the case may be*) the judgment and the reasons given therefor (*if any*) and notice of motion to the court filed with me; that the action was commenced in this court on..... (*or, in the case of appeals from judgments or orders made in interlocutory applications or proceedings at chambers, that the foregoing document is a true copy of the documents, evidence and other material used before the judge on an application (shortly stating the nature of the application), of the judgment thereon and the reasons given therefor (if any), and of the notice of appeal filed with me*); that this appeal book has been approved by the solicitors (*or settled by a judge, as the case may be*); that the appellant filed the said notice on....., A.D.....; (*and if security has been ordered add: and that the security required by order herein of the.....day of....., A.D....., for such appeal has been deposited with me*).

"Dated the.....day of....., A.D....." [O. 814.]

Submission  
of appeal book  
for approval

**340.** The appeal book in draft form or a list of its contents shall before printing or typewriting be submitted to the solicitor for the respondent, who shall if he approves thereof return the same within four days to the solicitor for the appellant marked "Approved"; but if the said solicitors cannot agree on the contents of the appeal book the same shall be settled by a judge on application by the solicitor for the appellant upon notice to the opposite side. [O. 801.]

Format of  
appeal books

**341.** The appeal book if printed shall comply with the Rules prescribed by the Supreme Court of Canada or by the Judicial Committee of the Privy Council in case of appeals thereto, with the exception of the Rule relating to the title of the cause, and if typewritten the matter shall be double spaced and the appeal book shall otherwise comply with the same Rules except as to printing and as to the number of lines to each page.

(2) The table of contents shall be at the beginning of the book and the arrangement shall be in the order in which the material is printed and shall give the description and date of every document and the name of each witness. [O. 806 (1), 807, 809.]

**342.** The registrar shall not file the book or receive the copies thereof without the leave of a judge, if the preceding Rule has not been complied with. [O. 806 (2).]

Costs of  
slovenly  
appeal books  
disallowed

**343.** If the proof has not been carefully corrected the court may disallow the cost of printing or may decline to hear the appeal and make such order as to postponement and payment of costs as may seem just. And in cases where the appeal book is typewritten, if in the opinion of the court the writing is illegible or so slovenly or carelessly done as not to be easily legible or comprehended, the court may disallow the cost of such book or of any part thereof or may decline to hear the appeal and may make such order as to postponement and payment of costs as may seem just. [O. 806 (3).]

Deposit and  
delivery of  
appeal books

**344.** The appellants shall unless otherwise ordered by a judge at the time of filing the appeal book, deposit with the registrar for the use of the judges, if printed, five copies thereof, or if typewritten three copies in the case of Supreme civil appeals and two copies in the case of District Court appeals.

(2) The appellant shall at or before the time of filing deliver to the opposite party two copies of such appeal book, if printed, or one copy, if typewritten. [O. 810.]

#### FACTUMS.

Deposit of  
factums

**345.** The appellant and respondent shall, at least one day before the opening of the sittings at which the appeal is to be argued, deposit with the registrar or cause to be received by him by mail, a factum or statement of their points of argument before the court and five copies thereof for the use of the court.



**346.** The factum shall contain a concise statement of the facts and of the points of law intended to be relied upon and of the arguments and authorities intended to be urged and cited at the hearing, arranged under appropriate heads. Contents of factum

**347.** The factum and copies may be printed or may be type-written, so as to be plainly legible, on one side only of the paper, the size of the paper to be the same as that of the appeal book. Format of factum

**348.** The factum and copies first received from either party by the registrar shall not be communicated to the other party until after receipt of the factum of such other party. Factums not to be communicated

**349.** The registrar shall not accept any factum or copy which is not in substantial accordance with these Rules. Factum to be in substantial accordance with rules

**350.** So soon as the factums of both parties have been received by the registrar, each party shall upon request deliver to the other party one copy of his factum. Delivery of factum

**351.** In default of compliance by either party with these Rules as to factums, the court may impose such terms upon the party in default as it may deem just. It shall be the duty of the registrar on the opening of the court to report to it such default. Default as to factums

**352.** On application by either party to a judge an order may in his discretion be made dispensing with the delivery of factums by either or both parties or varying the time for such delivery to the registrar. Delivery of factums dispensed with

**353.** A factum shall not contain irrelevant matter nor reproduce matter which appears in the appeal book where a reference to it will reasonably suffice. Factum not to contain unnecessary matter

**354.** In any case intended to be brought before the court in which any party interested considers it necessary that any original papers or documents on file in the clerk's office should be before the court, he may on *præcipe* and on payment of the necessary expenses require the clerk to transmit the same either by express or registered post to the registrar. Transmission of documents on file

**355.** Unless otherwise ordered by a judge, appeals in or in relation to causes or matters pending in the Judicial Districts of Calgary, Macleod, Lethbridge, Medicine Hat, Red Deer and Hanna, shall be entered for hearing at a sitting of the court to be held at Calgary; and appeals in or in relation to causes or matters pending in all other judicial districts shall be entered for hearing at a sitting of the court to be held at Edmonton, and notice of appeal shall be given in conformity with this Rule. Where appeals to be entered

(2) Appeal books, factums, documents and papers requiring to be filed or deposited in connection with appeals and motions shall be filed or deposited with the registrar or person acting

for the registrar at Edmonton when the appeal or motion is to be heard at Edmonton, and with the registrar or person acting for the registrar at Calgary when the appeal or motion is to be heard at Calgary.

Mode of entry

**356.** All appeals, matters referred to the court by a judge and special matters for argument before the court shall before the first day of each sittings be entered by the registrar on a list to be kept by him, and such entries in the case of appeals shall be made in the order in which the appeal books are filed: in other cases the entries shall be made in the order in which application is made to enter them; and the causes so entered shall be taken up after common motions in the order in which they have been so entered, unless otherwise ordered by the court.

Common motions

**357.** The first day of the sittings of the court shall be a common motions day; common motions may however be heard at any other time during the sittings by leave of the court.

Entry of order of Privy Council, Supreme Court of Canada or Supreme Court of Alberta

**358.** Upon the filing of the order made upon an appeal to His Majesty in Council with the clerk of the court with whom the judgment or order appealed from was entered, the clerk shall thereupon cause the case to be entered in the proper book and all subsequent proceedings may be taken thereupon as if the decision had been given in the said court.

(2) When the judgment of the Supreme Court of Canada in appeal has been certified by the registrar of that court to the clerk of the court with whom the judgment or order appealed from was entered, the clerk shall thereupon cause the same to be entered in the proper book and all subsequent proceedings may be taken thereupon as if the decision had been given in the latter court.

(3) The decision of the Appellate Division of the Supreme Court of Alberta shall be certified by the registrar to the clerk of the court with whom the judgment or order appealed from was entered, who shall thereupon cause the same to be entered in the proper judgment or order book and all subsequent proceedings may be taken thereupon as if the decision had been given by the judge appealed from. [O. 818.]

Appellant may discontinue

**359.** An appellant may discontinue his appeal by giving to the respondent a notice signed by the appellant or his solicitor stating that he has so discontinued it and thereupon the appeal shall be at an end and the respondent shall be entitled to his costs of the appeal. [O. 820.]

Effect of default in entering of appeal or giving security

**360.** If an appellant who has served a notice of appeal does not give security when ordered or does not enter the appeal, he shall be deemed to have abandoned the same and the respondent shall be entitled to the costs of the appeal. [O. 821.]

Costs on discontinuance or abandonment

**361.** The costs under the next two preceding Rules may be taxed without an order upon the production of the notice of discontinuance or of the notice of appeal with a certificate of



the proper officer that security has been ordered but has not been given or that the appeal has not been entered; and if the costs are not paid within four days from taxation, the respondent may obtain on *praecepe* an order in the court appealed from for payment of the same on filing the certificate of taxation and an affidavit of non-payment of the costs. [O. 882.]

**362.** A respondent may consent to the reversal or variation of the judgment, order or proceeding appealed from by giving to the appellant a notice of such consent signed by himself or his solicitor and thereupon the court may pronounce judgment of reversal or variation accordingly. [O. 823.]

Respondent may consent to renewal of judgment, etc.

**363.** On an appeal to the Supreme Court of Canada a case shall not be certified unless the proof sheets of the reasons for judgment have been submitted to the judges for correction. [O. 824.]

Certificate of case on appeal to Supreme Court

DISCOVERY AND INSPECTION.

424 **364.** A judge at any time may order any party to a cause or matter to discover, by affidavit, on the documents which are or have been in his possession or power relating to any matter in question, in the said cause or matter or such of them as the judge shall deem proper. [191 & 193; E. 354 & 356; O. 463 & 464.]

Order for discovery of documents

427 **365.** A person for whose benefit an action is prosecuted or defended or the assignor of a *chose in action* upon which the action is brought, shall be regarded as a party thereto for the purposes of discovery of documents. [O. 466.]

Person benefited or assignor of chose in action

430 (1) **366.** The affidavit shall be made by the party or by such person or persons as shall be directed by the order and shall state:

Form of affidavit on production

(1) What documents relating to the matters in question are in the possession or power of the party.

(2) What documents, if any, the party objects to produce and the grounds for any such objection.

(3) What relevant documents the party has had in his possession, the time when and the manner in which they ceased to be in his possession or power, and their present whereabouts, so far as the deponent can state the same either from his own knowledge or upon information or belief.

(4) That the party has not and has never had any other relevant documents in his possession or power so far as the deponent knows or believes. [192; E. 355; O. 467 & 468.]

**367.** The affidavit shall be filed and a copy thereof served on the other parties within the time limited by the order for making discovery, if any, or in the event of no time being limited within ten days after demand.

Filing of affidavit and service of copy

Notice to produce  
documents  
referred to  
in pleadings,  
particulars  
or affidavit

431

**368.** A party shall be entitled to obtain the production for inspection of any documents referred to in the pleadings, particulars or affidavits of any other party and in his possession or power by making a demand therefor and shall be entitled to take copies of such documents when so produced for inspection; provided that this shall not apply to any documents referred to in an affidavit of documents, the production of which is therein objected to. [194 pt.; E. 357 pt.; O. 469 (1).]

Notice  
to inspect

433

**369.** The party upon whom such demand is made shall within three days from the receipt thereof deliver to the party giving the same a notice stating a reasonable time within three days from the delivery thereof, at which the documents may be inspected at the office of his solicitor, or, in the case of bankers' books or other books of account in constant use for the purpose of any trade or business, at their usual place of custody. [195; E. 359; O. 470.]

Order for  
inspection

434

**370.** If the party served with such demand omits to give such notice of a time for inspection or omits or objects to give such inspection, the party desiring it may apply to a judge for an order of inspection. [196; E. 360; O. 471.]

Reservation  
of question as  
to discovery

436

**371.** If the party from whom discovery of any kind, or inspection is sought objects to the same or any part thereof, a judge, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action or that for any other reason it is desirable that any issue or question in dispute should be determined before deciding upon the right to discovery or inspection, may order that such issue or question be determined first and reserve the question as to the discovery or inspection. [197; E. 362; O. 472.]

Further and  
better affidavit

**372.** If it be made to appear to a judge that any document in the possession or power of a party has been omitted or that a claim of privilege has been improperly made in an affidavit of documents filed, he may order a further and better affidavit.

Inspection  
by judge

(2) For the purpose of determining whether a claim of privilege has been improperly made the judge may inspect the document in respect of which such claim of privilege is made. [E. 361A (2).]

Leave to  
use document  
omitted

431

**373.** Any party omitting to mention any documents in his affidavit of documents or any party not producing any document in compliance with a demand shall not afterwards be at liberty to use the document in evidence, unless he satisfies the court or judge that he had some sufficient cause for such omission or non-production. [194 pt.; E. 357 pt.; O. 469 (2).]

Consequences  
of disobeying  
an order for  
discovery

437

**374.** If a party fails to comply with any order for production or inspection of documents he shall be liable to attachment. He shall also be liable, if a plaintiff, to have his action dismissed and, if a defendant, to have his defence, if any, struck out. [198; E. 363; O. 473.]



439 **375.** Service of an order for production or inspection on the solicitor of a party shall be sufficient service on the party, but on an application for attachment for disobedience to the order the party against whom the application is made may show in answer that he has had no notice or knowledge of the order. [199; E. 364; O. 475.] Service of order on solicitor, when sufficient

440 **376.** A solicitor upon whom an order against any party for production or inspection is served who neglects without reasonable excuse to give notice thereof to his client shall be liable to an attachment. [200; E. 365; O. 476.] Attachment of solicitor

471 **377.** The production of an original record or of an original memorial from any public office of record shall be obtained only by the order of a judge. [O. 479.] Production of original record by order only

EVIDENCE.

473 **378.** Whenever a party desires to call the opposite party as a witness at the hearing or trial he may in case such party is within the jurisdiction give him or his solicitor at least eight days' notice of the intention to examine him as a witness in the cause, paying at the same time the proper amount of conduct money; and if such party does not attend on such notice such non-attendance shall be taken as an admission *pro confesso* against him in any such action, unless otherwise ordered by the court or a judge, and a general finding or judgment may be had against the party thereon or the proceedings in the action may be postponed on such terms as the court or judge sees fit to impose. [O. 481.] Calling opposite party

**379.** Whenever a party desires to call any person as a witness at the hearing or trial of any action or proceeding he may serve him with a notice requiring him to attend thereon, stating the time and place at which he is required to attend and the documents, if any, which he is required to produce, but such notice shall not be effective unless at the time of such service or prior thereto or within a reasonable time prior to the time at which he is required to attend, he is paid the proper amount of conduct money. Notice requiring attendance of witness

475 **380.** Upon proof to the satisfaction of the judge presiding at the sittings of any court of the service of a notice upon any witness who fails to attend or to remain in attendance in accordance with the requirements of the notice and that a sufficient sum for conduct money as a witness has been duly paid or tendered to him and that the presence of such witness is material, the judge may by his warrant directed to any sheriff or other officer of the court or to any constable, cause such witness to be apprehended and forthwith brought before him or any other judge who may thereafter preside at such sittings, to give evidence; and, in order to secure his presence as a witness, such witness may be taken on such warrant before the presiding judge and detained in the custody of the person to whom the warrant Bench warrants

is directed or otherwise as the presiding judge may order until his presence as such witness is required or, in the discretion of the said judge, he may be released on a recognizance (with or without sureties) conditioned for his appearance to give evidence.

(2) The warrant may be executed in any part of Alberta. [276; O. 482.]

Evidence on  
motion or  
petition

**381.** Evidence upon a motion or petition may be given by affidavit. [293; E. 521; O. 489.]

Cross-  
examination  
of deponent

**382.** A person who has made an affidavit to be used in any action or proceedings, including an affidavit of documents, may be cross-examined thereon. [282 & 293; E. 502 & 521; O. 490.]

(2) No order for such cross-examination shall be necessary if the person is within the jurisdiction of the court.

**383.** The person to be examined under the next preceding Rule may be required to attend in the same manner as a party being examined for discovery and his examination shall be subject to the same Rules, so far as they are applicable, as apply to the examination of a party for discovery. [282; E. 502; O. 492.]

Attendance  
of witnesses  
for examination  
in motions,  
etc., how  
procured

**384.** A party to any action or proceeding may require the attendance of a witness to be examined before any officer having jurisdiction in the judicial district where the witness resides to issue appointments for the examination of parties for discovery. for the purpose of using his evidence upon any motion, petition or other proceeding before the court or any judge or judicial officer in chambers; and his attendance may be procured and his examination conducted in the same manner as those of a witness at the trial. [282 & 284; E. 502 & 504; O. 491 & 492.]

Production  
of documents  
and *viva voce*  
examinations

**385.** For the purpose of a motion the court or judge may upon such terms as may seem just order documents to be produced and witnesses to appear and be examined *viva voce* before such court or judge or before any other person and at any place:

Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial. [268; E. 489; O. 493.]

Disobedience  
to order for  
attendance

**386.** Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or of producing any document shall be deemed guilty of contempt of court and may be dealt with accordingly. [269; E. 490.]

Expenses of  
person ordered  
to attend

**387.** Any person required to attend for the purpose of being examined or of producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court. [270; E. 491.]



**388.** Such examination shall, unless otherwise ordered, be conducted in accordance with the practice at trials so far as the same is applicable. [272 & 284; E. 493 & 504; O. 494.] Examination, how taken

**389.** The court or a judge may order the sheriff, gaoler or other officer having the custody of any prisoner to produce him for any examination authorized by these Rules. [O. 495.] Production of prisoner for examination

**390.** Whenever any person wishes to produce to the court or a judge any pleading or other proceeding filed in any office of the court, he may demand and on payment of the lawful fees receive from the officer in whose custody the pleading or other proceeding is, a copy of the same certified by the officer to be a true copy of the original and such copy shall be admissible in evidence to the same extent as the original would be admissible. [265; E. 486; O. 496.] Right to receive certified copies of proceedings

**391.** Where money is directed to be paid into a bank, the certificate of the manager, agent, accountant, or like officer of the bank at the place where the money is made payable of such payment or of default in making such payment shall be sufficient evidence of such payment or of default. [O. 497.] Proof of payment or default in payment into bank

**392.** Proof of service and of the time of service of a notice to admit or produce may be given by an affidavit of the solicitor in the cause or his clerk. [E. 378; O. 487.] Proof of service of a notice to produce

**393.** In the absence of an agreement between the parties and subject to these Rules, the witnesses at the trial of an action or at an assessment of damages shall be examined *viva voce* and in open court, but the court or judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit or that the affidavit of any witness may be read at the trial on such conditions as may seem just or that any witness, whose attendance for some sufficient cause ought to be dispensed with, be examined before an examiner; but where the other party *bona fide* desires the production of a witness for cross-examination and such witness can be produced, an order shall not be made authorizing his evidence to be given by affidavit. [263; E. 483; O. 483.] Evidence on trial

**394.** All evidence taken at the trial may be used in any subsequent proceedings in the same cause. [287; E. 507.] Use of evidence in subsequent proceedings

**395.** The court or a judge may in any cause or matter, where it appears necessary for the purposes of justice, order any person to be examined upon oath before an officer of the court or any other person and at any place, whether within or without the jurisdiction, and may order any deposition so taken to be filed in the court and may empower any party to the cause or matter to give such deposition in evidence therein on such terms as may seem just. Court or a judge may order depositions to be taken

Examination  
how taken

(2) Such examination shall, unless otherwise ordered, be conducted in accordance with the practice upon examinations of witnesses at the trial, so far as the same is applicable. [267 & 272; E. 487 & 493; O. 485 (2).]

Persons outside  
Alberta

498

**396.** Where the testimony of a person who is without the limits of Alberta is required, the court or a judge may order the issue of a commission for the examination of such person. [E. 488; O. 499.]

Refusal to  
attend

499

**397.** If any person for whose examination an order has been made or a commission has issued, without just cause refuses to attend before the examiner or commissioner, or if having attended he refuses to be sworn or to affirm or to answer any lawful question the party requiring the attendance of such person may, upon proof of such refusal by certificate of the examiner, apply to a judge for an order directing such person to attend or be sworn or answer any question. [E. 495; O. 500.]

Notice of  
intention to  
dispatch  
commission

**398.** The party having the carriage of the order or commission shall give the opposite party five days' notice of intention to dispatch the same to the examiner or commissioner. [O. 501.]

Particulars  
to be stated  
in notice

503

**399.** Notice of intention to proceed to take the examination under the order or commission shall be given to the opposite party if, before the expiry of the time for dispatching the order or commission or within such time as may be provided by the order, he gives the name and the address of a person resident within two miles of the place where the order or commission is to be executed, on whom such notice may be served. [O. 502.]

Notice of  
execution of  
commission

509

**400.** Where notice of the execution of the order or commission is required to be served, forty-eight hours' notice shall be sufficient; such notice shall be in writing stating the time and place of the intended examination and shall be addressed to the person named for that purpose before the expiry of the time limited for the dispatching of the order or commission, or as provided in the order; and service upon him or upon a grown-up person at the address given shall be sufficient. If no name and address is given or if the name or address given prove to be illusory or fictitious or if the party so notified fail to attend pursuant to the notice, the order or commission may be executed *ex parte*. [O. 504.]

Oath of  
witness

511

**401.** The witnesses shall be examined on oath, affirmation or otherwise, in accordance with their religion, by or before the examiner or commissioner. [O. 505.]

Mode of  
examination

506

**402.** Unless otherwise directed by the order or commission the examination of witnesses shall be by oral questions and the oral questions and the answers thereto shall be reduced into writing and returned with the order or commission. [O. 502 pt. & 506.]



§67 **403.** Where the examination is to take place upon written interrogatories, the interrogatories in chief shall be delivered to the opposite party, unless otherwise ordered, at least eight days before the dispatch of the order or commission; and the cross-interrogatories shall be delivered to the opposite party, unless otherwise ordered, within four days after the receipt of the interrogatories in chief; and in default of cross-interrogatories being delivered the opposite party may dispatch the order or commission without cross-interrogatories. [O. 503.] Examination on written interrogatories

§72 **404.** Where a witness does not understand the English language the order or commission shall, unless otherwise ordered, be executed with the aid of an interpreter nominated by the examiner or commissioner and sworn by him to interpret truly the questions to be put to the witness and his answers thereto, and the examination shall be taken in English. [O. 507.] Interpreter

§10 **405.** If a witness produce a book, paper or document and refuses for good cause, to be stated in his deposition, to part with the original, then a copy or extract certified by the examiner or commissioner to be a true and correct copy or extract,, shall be annexed to the deposition of the witness. [O. 508.] Copies as evidence

**406.** The depositions may be taken in shorthand if so provided by the order or commission or if the parties so agree. [O. 509.] Depositions may be taken in shorthand

**407.** If the examination is to be taken in shorthand, the examiner or commissioner may take the same in shorthand or employ a shorthand writer who shall be duly sworn. [O. 510.] By commissioner or sworn shorthand writer

§13 **408.** Unless the examination is taken in shorthand, the depositions shall be subscribed by the witness and by the examiner or commissioner. Depositions, how to be signed

(2) Where taken in shorthand it shall not be necessary that the depositions or the transcript thereof be read over and signed by the person examined, but the transcript thereof shall be read over to and signed by him if any of the parties so desire.

(3) A copy of the deposition if taken in shorthand by the examiner or commissioner, certified by him, or if taken in shorthand by a shorthand writer employed for the purpose as aforesaid, a transcript certified by him and signed by the examiner or commissioner, shall for all purposes have the same effect as the original depositions. [287a; O. 511.]

§14 **409.** The depositions and any interrogatories and cross-interrogatories and any documents or certified copies thereof or extracts therefrom referred to therein, shall be sent to the proper officer on or before such day as may be ordered in that behalf, enclosed in a cover under the seal of the examiner or commissioner; and the same or office copies thereof may, unless a judge otherwise orders, be given in evidence by and on behalf of the parties respectively, saving all just exceptions, without Return of commission and use thereof as evidence

any other proof of the absence from Alberta of the witness therein named than an affidavit of the solicitor or agent of the party as to his belief of such absence. [280; E. 500; O. 512.]

Parties joining  
in commission  
to share costs

515

**410.** Where upon an application for an order or commission to take evidence, the opposite party desires to join in the examination and examine witnesses on his own behalf or names an examiner or commissioner, each party shall pay the costs consequent upon the examination of his witnesses and the appointment of his examiner or commissioner without prejudice to the question by whom such costs shall ultimately be borne.

When  
commissioner of  
one party may  
act alone

(2) If for any reason the examiner or commissioner named by either party refuses to act upon receiving forty-eight hours' notice in writing from the other examiner or commissioner so to do, the examination may be conducted by the examiner or commissioner giving such notice. [O. 513.]

Order for  
commission to  
be read as  
including above  
particulars

516

**411.** Every order for examination or for a commission shall be read as if it contained the above particulars and shall not set forth the same but may contain any variations therefrom and any other directions which the court or judge sees fit to make. [O. 514.]

Opening  
commission

**412.** An order for examination or a commission when returned shall be opened at the trial, or before the trial at the instance of any party, without order by the officer to whom it is returned, on two clear days' notice to the parties interested. [O. 515.]

#### AFFIDAVITS.

Form of  
affidavits

526

**413.** An affidavit shall be intituled in the cause or matter and shall be drawn up in the first person, stating the name of the deponent in full, and his description and true place of abode, and shall be signed by him. [294 pt., 299 & 300; E. 522 pt., 527 & 528; O. 516.]

Contents  
of *jurat*

528

**414.** The time when and the place where the affidavit is taken shall be expressed in the *jurat*. [297; E. 525.]

529

**415.** In an affidavit made by two or more deponents the names of the persons making the affidavits shall be inserted in the *jurat*, but if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both, or all, of the "above named" deponents. [301; E. 529; O. 517.]

Statements  
as to belief

530

**416.** Affidavits shall be confined to the statement of facts within the knowledge of the deponent, but on interlocutory motions statements as to his belief with the grounds thereof may be admitted. [295; E. 523.]

Affidavits by  
officers of  
corporation

530

**417.** In an action or proceeding to which a corporation is a party any affidavit required by these Rules to be made by a party may be made by an officer, servant or agent of the cor-



poration having knowledge of the facts required to be deposed to, and he shall state therein that he has such knowledge. [O. 519.]

§31 **418.** An affidavit having in the *jurat* or body thereof any interlineation, alteration, or erasure, shall not be used without leave unless the interlineation, alteration or erasure is authenticated by the initials of the officer taking the affidavit. [304; E. 532; O. 520.] Alterations in affidavits

§32 **419.** Where an affidavit is sworn by a person who appears to be illiterate, the officer taking the affidavit shall certify in the *jurat* that the affidavit was read in his presence to the deponent who seemed perfectly to understand it and signed it in his presence; otherwise such affidavit shall not be used without leave. [305; E. 533; O. 521.] Affidavits by illiterate persons

§33 **420.** No affidavit to be used in any cause or matter in court shall be sufficient if sworn before the party on whose behalf it is made or his solicitor or before the clerk or partner of such party or solicitor. [308 & 309; E. 526 & 537; O. 522.] No affidavit to be sworn before solicitor of party

**421.** The court or judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or *jurat* or any other irregularity in the form thereof. [306; E. 534.] Use of defective affidavit

§34 **422.** Affidavits and other papers required to be filed shall be filed before being used. [302; E. 530; O. 523.] Filing of affidavits

§35 **423.** Affidavits upon which a notice of motion or petition is founded shall be filed before the service of the notice of motion or petition. [O. 524.]

**424.** Where property marked exhibits are referred to in an affidavit filed and are not annexed thereto, such exhibits need not be filed and shall be handed out on the disposal of the motion, unless otherwise ordered. [O. 525.] Exhibits, when not to be filed

**425.** Any party to a cause or matter may give notice by his pleading or otherwise in writing that he admits the truth of the whole or any part of the cause of action of any other party. [226; E. 371.] Notices of admissions

§36 **426.** Any party may by notice in writing call on any other party to admit for the purpose of the cause, matter or issue only, any specific fact or facts mentioned in such notice, including any fact in respect of any document; and in case of refusal or neglect to admit the same within six days after service of such notice or within such further time as may be allowed by judge the cost of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter or issue may be, unless at the trial or hearing the judge is satisfied that the refusal to admit was reasonable: Notice to admit facts

Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter or issue and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving notice;

Provided also that the judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just. [227, 228; E. 372 & 374.]

Admissions  
sufficiently  
signed by  
solicitor

539

**427.** It shall be sufficient if written admissions are signed by the party or by the solicitor of the party by whom or on whose behalf they purport to be made; and the production of such admissions purporting to be so signed shall be *prima facie* evidence of the fact of such signature. [230; E. 377; O. 528.]

Impounded  
documents

592

**428.** Any document produced to a court or a judge may be ordered to be impounded and shall thereafter not be inspected except by leave of the court or judge by whose order it has been impounded. [226; E. 611a.]

#### ORIGINATING NOTICE.

Originating  
notice

928

**429.** Where under any Statute of Alberta or Ordinance of the North-West Territories proceedings may be taken by originating summons, such proceedings may be taken by notice as hereinafter set out. [469.]

Filing

**430.** Proceedings authorized to be begun by notice shall be begun by filing a copy of the notice in the office of the clerk for the district in which the proceedings are to be carried on.

Service

**431.** A notice originating proceedings shall be served at least ten days before the day named in the notice for hearing of the application, but by leave of a judge such time may be shortened. [471.]

Proceedings  
begun by  
originating  
notice

**432.** Proceedings may be commenced by originating notice in the following cases:

(a) Proceedings to recover possession of land;

(b) Proceedings for foreclosure, sale or redemption under a mortgage or lien;

(c) Applications for the appointment of a new trustee with or without a vesting or other consequential order, or for a vesting or other consequential order on the appointment of a new trustee;

(d) Proceedings for the declaration of a beneficial interest in or a charge upon land and of the character and extent thereof and for a declaration settling the true priority as between such interest or charge and other interests or charges, notwithstanding any entry in the register or the registration or filing of any instrument, and for an order cancelling any certificate of title or making any title subject to the said interest or charge.



(e) Proceedings for the determination of any question of construction arising under any written instrument and for a declaration of the rights of the persons interested. [469; 488; E. 767 (a); 775 (a).]

128 **433.** The executors or administrators of a deceased person or any of them and the trustees under any deed or instrument or any of them or any person claiming to be interested in the relief sought as creditor, devisee, legatee or next-of-kin of a deceased person or as *cestui que trust* under the trusts of any deed or instrument or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may serve a notice of motion returnable before a judge for such relief of the nature and kind following, as may be specified in the notice and as the circumstances of the case may require: that is to say, the administration of the estate or trust or the determination without an administration of the estate or trust of any of the following questions or matters:

Originating notice relating express trusts and administration of estate of deceased person

(a) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee or next-of-kin or *cestui que trust*.

(b) The ascertainment of any class of creditors, legatees, devisees, next-of-kin or others.

(c) The furnishing of any particular accounts by the executors or administrators or trustees and the vouching, where necessary, of such accounts.

(d) The payment into court of any money in the hands of the executors or administrators or trustees.

(e) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors, administrators or trustees.

(f) The approval of any sale, purchase, compromise or other transaction.

(g) The opinion, advice or direction of a judge pursuant to *The Trustee Ordinance* or any Act passed in substitution therefor.

(h) The determination of any question arising in the administration of the estate or trust. [481 pt.; E. 765 pt.; O. 938.]

129 **434.** The persons to be served with notice under the preceding Rule in the first instance shall be the following, that is to say:

Persons to be served with notice

(1) Where the notice is served by an executor, administrator or trustee:

(a) For the determination of any question under clauses (a), (e), (f), (g) or (h), the persons or one of the persons whose rights or interests are sought to be affected.

(b) For the determination of any questions under clause (b), any member or alleged members of the class.

(c) For the determination of any question under clause (c), any person interested in taking such accounts.

(d) For the determination of any question under clause (d), any person interested in such money.

(e) If there be more than one executor or administrator and they do not all concur in the service of the notice, those who do not concur.

(2) Where the notice is served by any person other than the executors, administrators or trustees, the said executors, administrators or trustees. [454, 482; E. 767 pt.; O. 939.]

Directions  
and evidence

**435.** The judge may give such directions as may seem necessary, and upon the return of the motion may permit evidence to be given *viva voce*. [456, 483; E. 769.]

Service of  
originating  
notice

**436.** All the Rules relating to service of a statement of claim on a defendant, whether personal or substitutional and whether within or without the jurisdiction, shall apply to the service of an originating notice. [472.]

Special  
directions as  
to service

**437.** Where necessary the judge may give directions as to the persons to be served with an originating notice. [455; E. 768; O. 940.]

Summary  
judgment  
or order

**438.** The judge may summarily dispose of the questions arising on the application and make such order as the nature of the case may require or may give such directions as may seem proper for the trial of any questions arising upon the application.

(2) Upon disposing of an application for foreclosure, sale or redemption, judgment may be given upon the covenants as well as an order for the possession of the lands, together with any necessary vesting orders. [484 & 453; E. 770; O. 941.]

Carriage and  
service of  
judgment  
or order

**439.** Any special directions touching the carriage or execution of the order or the service thereof upon persons not parties may be given as may seem proper. [457, 474, 485; E. 771; O. 942.]

Non-  
interference  
with  
directions of  
trustees, etc.

**440.** Service of a notice under Rule 434 shall not interfere with or control any power or discretion vested in any executor, administrator or trustee except so far as such interference or control may necessarily be involved in the particular relief sought. [481 pt.; E. 774; O. 943.]

Application  
for partition  
or sale

**441.** An adult person entitled to compel partition of land or any estate or interest therein may on notice to one or more of the persons entitled to a share therein apply to a judge for partition or sale, and the judge may make such order for partition or sale or such other order as may seem just. [O. 956.]

Infant's  
estate

**442.** A judgment or order for the administration or partition or sale of an estate in which an infant is interested shall not be made until the infant is represented by its guardian *ad litem*. [O. 948.]



778 **443.** Where judgment or an order for administration or sale is granted, the referee or person to whom the matter is referred shall, unless otherwise ordered, have power to deal with the estate, the subject of administration or partition or sale, and shall have power to dispose of the costs and finally wind up all matters connected with the estate without any further directions and without any separate, interim or interlocutory reports or orders, except where the special circumstances of the case require. Power of referee

779 (2) All moneys realized from the estate shall forthwith be paid into court and no moneys shall be distributed or paid out for costs or otherwise without an order of the judge, and upon an application for an order for distribution the judge may review or amend the report or refer it back to the referee or make such other order as may seem meet. [O. 953.] Moneys to be paid into court

778<sup>c</sup> **444.** It shall not be necessary for the court or judge to pronounce a judgment or make an order, whether on any summary application or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order. [486; E. 772; O. 954.] General administration need not be ordered

778<sup>a</sup> **445.** In any action or proceedings for the administration or execution of trusts by a creditor or beneficiary under a will intestacy or instrument of trust, where no accounts or insufficient accounts have been rendered, the judge may in addition to any powers already existing— Additional order where no or insufficient accounts have been rendered

(a) Order that the executors, administrators or trustees shall render to the plaintiff or applicant a proper statement of their accounts, with an intimation that if such accounts be not rendered they may be made to pay the costs of the proceedings, and the judge may direct the action or proceeding to be stayed or to stand over in the meantime, as may seem just;

(b) Where necessary to prevent proceedings by other creditors or by beneficiaries, make the usual judgment or order for administration, with a provision that no proceedings are to be taken thereunder without the leave of a judge. [487; E. 772a; O. 955.]

PETITIONS.

**446.** All proceedings not authorized to be commenced by statement of claim or originating notice shall be commenced by petition. Petitions, when used

772 **447.** There shall accompany or be endorsed on every petition which requires to be served a notice addressed to the parties concerned, stating when and where the petition will be presented and specifying the affidavits or other material to be used in support thereof. [Cf. E. 711; O. 937.] Endorsement on petition

**448.** A petition for leave to pay money into or deposit securities in court under *The Trustee Ordinance* shall be intitled in the matter of the Ordinance and of the trust and shall describe Petition for leave to pay money into court under Trustee Ordinance

the trust and the instrument creating it and give the names and residences of the persons interested therein, as far as known, and the place where the petitioner may be served with notice of any proceedings relating to the money or securities and shall be verified by affidavit. [E. 762h.]

**449.** Notice of any payment or deposit shall be given to such person and in such manner as the judge granting leave shall direct. [E. 762h.]

Compromise  
where infant  
etc., concerned

**450.** No settlement or compromise or acceptance of money paid into court, whether before, at or after the trial in any cause or matter in which money or damages are claimed by or on behalf of an infant or person of unsound mind, shall be valid without the sanction of a judge. [E. 269.]

Title of  
petition as  
to real estate  
of infant

**451.** A petition for the sale or other disposition of the real estate of an infant shall be intituled "In the matter of....., an infant." [O. 962.]

Contents of  
petition

**452.** The petition shall state the nature and amount of the personal property to which the infant is entitled, the necessity of resorting to the real estate, its nature, value and the annual profits thereof; it shall designate the lands to be disposed of, propose a scheme for that purpose and for the appropriation of the proceeds and state specifically the relief desired and circumstances sufficient to justify the sale or other disposition of the land and the application of the proceeds in the manner proposed.

(2) If an allowance for maintenance is desired, a case shall also be stated and made to justify such an order and to regulate the amount.

(3) If the appointment of a guardian is desired, reasons shall be stated for the appointment of the person proposed. [O. 964.]

Production  
of infant

**453.** Unless otherwise directed by the judge or other officer making the order the infant shall be produced before him. [Cf. 585; O. 965.]

Infant if over  
fourteen years  
to be examined

**454.** Unless otherwise directed by the judge the infant where above the age of fourteen years shall be examined apart by the judge upon the matter of the petition and as to his consent thereto. [Cf. 579.]

If out of  
Alberta

(2) Where the infant is out of Alberta the judge may direct inquiry as to the infant's consent by his examination in such manner as may seem proper, or by affidavit or otherwise, as may seem just.

Infant under  
14 need not  
be examined

**455.** It shall not be necessary to examine an infant under fourteen years of age unless otherwise ordered, but it shall be sufficient for the judge before whom such infant is produced to certify that he has been produced and that he is, or appears to be, under the age of fourteen years. [O. 967.]



805 **456.** The witnesses to verify the petition shall, unless otherwise ordered, be examined *viva voce* before the judge making the order as to the matter of the petition. [O. 968.] Examination of witnesses in support of petition

808 **457.** No instrument dealing with the lands shall be executed until evidence is produced of the consideration money having been paid into court or of the payment thereof into court having been dispensed with; and, where a mortgage is taken for part of the purchase money, until evidence is given of such mortgage having been registered and deposited with the clerk. [O. 970.] Evidence of payment of consideration prior to execution

**458.** Whenever the judge deems it convenient so to do he may appoint some other person to execute an instrument in the place of the infant. [580.] Appointment of person to execute

**459.** Every such instrument, whether executed by the infant or some person appointed to execute the same in his place, shall be as effectual as if the infant had executed the same and had been of the age of twenty-one years at the time. [581.]

**460.** The moneys arising from any such sale, mortgage, lease or other disposition shall be laid out, applied and disposed of in such manner as the judge directs. Application of moneys

**461.** If any real estate of an infant is subject to any encumbrance and the person entitled to such encumbrance consents in writing to accept in lieu of such encumbrance any gross sum of money which the judge thinks reasonable or the permanent investment of a reasonable sum of money in such manner that the interest thereof be made payable to the person entitled to such encumbrance during her or his life, the judge may direct the payment of such sum or the investment of such other sum of money out of the proceeds or other disposition of the real estate of the infant: Acceptance of gross sum by encumbrancer

Provided always that it shall be competent for the judge in any case where the estate of the infant is subject to any lien or encumbrance of uncertain duration to compute the reasonable value of the same and to order the sale or other disposition of the estate of the infant freed or discharged from such encumbrance and direct the payment of the value of such encumbrance out of the proceeds of the sale or other disposition of the real estate of the infant. [584.]

SUMMARY INQUIRIES IN AID OF EXECUTION.

740 **462.** Where a judgment creditor alleges that the judgment debtor has made a conveyance of his lands which is void as being made to delay, hinder or defraud creditors or a creditor, it shall not be necessary to institute an action for the purpose of setting aside the conveyance, but a motion may be made to a judge by the judgment creditor calling upon the judgment debtor and the person to whom the conveyance has been made or who has acquired any interest thereunder to show cause why Motion for order for sale of lands fraudulently conveyed by judgment debtor

the lands embraced therein or a competent part thereof should not be sold to realize the amount to be levied under the execution. [245; O. 1015.]

Motion for  
order of sale  
of judgment  
debtor's  
equitable  
interest

**463.** Where a judgment creditor alleges that the judgment debtor is entitled to or has an interest in land which cannot be sold under legal process, but can be rendered available by proceedings for equitable execution by sale for satisfaction of the debt, a motion may be made to a judge by the judgment creditor calling upon the judgment debtor and the trustee or other person having the legal estate in the land in question to show cause why the said land or the interest therein of the judgment debtor or a competent part thereof should not be sold to realize the amount to be levied under the execution. [246; O. 1016.]

Proceedings  
after such  
applications

**464.** Upon any application under either of the two preceding Rules such proceedings shall be had either in a summary way or by the trial of an issue or by inquiry before an officer of the court or by an action or otherwise, as the judge may deem necessary or convenient for the purpose of ascertaining the truth of the matters in question and whether the land or the judgment debtor's interest therein is liable for the satisfaction of the execution. [247; O. 1017.]

Order for sale

**465.** Where, in a summary way or upon the trial of an issue or as the result of an inquiry under the next preceding Rules, any land or the interest of a debtor therein is found liable to be sold an order shall be made by the judge, declaring what land or what interest therein is liable to be sold and directing sale thereof according to the usual practice. [248; O. 1019.]

Interim  
injunction  
or receiver

**466.** Pending any such issue or inquiry an interim injunction order may be issued or a receiver appointed to prevent the transfer or other disposition of the property. [249.]

#### EXTRAORDINARY REMEDIES—REPLEVIN.

Order of  
replevin

**467.** In any action brought for the recovery of any personal property and claiming that such property was unlawfully taken [or] is unlawfully detained, the plaintiff may, if he desires to replevy such property, obtain an order of replevin for the delivery of the property to him. [426; O. 1067.] Amended 23rd Oct., 1914.

How obtained

**468.** An order of replevin may be obtained:

(1) From the clerk on *praecipe* if the plaintiff, his servant or agent makes an affidavit giving the description and value of the property claimed and stating—

(a) That the plaintiff is the owner or lawfully entitled to the possession thereof.

(b) That the property was wrongfully taken out of the possession of the plaintiff or fraudulently got out of his possession within two months next before making the affidavit; or, if the



property was distrained for rent or *damage feasant*, that the property was taken under colour of distress for rent or *damage feasant*, as the case may be, within the said period of two months.

(2) In other cases, from a judge, on motion therefor, on an affidavit by the plaintiff or some other person showing the fact of the wrongful taking or detention complained of, the value and description of the property, and that the plaintiff is the rightful owner thereof or is lawfully entitled to the possession thereof, as the case may be. [427; O. 1068, 1069.]

860 **469.** Where a motion for an order is made, the judge may grant the order *ex parte* or may direct notice to be served on the defendant to show cause why the order should not issue; and may in either case direct the sheriff to take a bond in less or more than double the value of the property, or may direct him in addition to or without taking a bond to take and detain the property until further order, instead of at once restoring the same to the plaintiff; or may order that the plaintiff, instead of giving a bond, be at liberty to pay into court to the credit of the action such sum as may be proper (to be named in the order), to stand as security to the defendant in the same manner and to the same extent as any bond which the plaintiff would otherwise be required to give to the sheriff; or may impose any terms or conditions in granting or refusing the order as under the circumstances seem just.

(2) Money, when paid into court, shall remain in court as security as aforesaid, subject to further order by a judge. [O. 1069.]

861 **470.** Where an order of replevin is issued the defendant may at any time, on notice to the plaintiff, apply to a judge to discharge, vary or modify the order or stay proceedings thereunder, or for any other relief with respect to the return, safety or sale of the property or any part thereof or otherwise, and the judge may make such order thereon as may seem just. [429 (2); O. 1070.]

862 **471.** The order shall state the description and value of the property to be replevied. [O. 1071.]

863 **472.** Subject to any order providing for the payment of money into court, instead of the giving of a bond, before the sheriff acts on the order, he shall take a bond from the plaintiff with two sufficient sureties in such sum as may be prescribed by order or, if no such sum has been so prescribed, then in double the value of the property as stated in the order of replevin; the bond shall be assignable to the defendant.

(2) Where money is paid into court, instead of a bond being given, the sheriff may, subject to any provisions in the order, act on the order upon a certificate of the clerk of the court being delivered to him that the money required to be paid into court has been paid in pursuant to the order. [428; O. 1072.]

863

**473.** The condition of the replevin bond shall be that the plaintiff shall prosecute the action with effect and without delay and will return the property to the defendant if ordered so to do and pay such damages, costs and expenses as the defendant shall sustain by reason of the issue of the replevin order if the plaintiff fails to recover judgment. [428.]

What sheriff  
shall do when  
order issues  
on *praecipe*

864

**474.** Where the order is issued by the clerk on *praecipe* the sheriff shall take and detain the property and shall not deliver the same to the plaintiff without the order of a judge, but shall, within fourteen days from the time of taking the same, redeliver it to the defendant unless in the meantime the plaintiff obtains and serves on the sheriff an order directing a different disposition of the property. [O. 1076.]

Return of  
order with  
statement

869

**475.** The sheriff shall return the order to the clerk on or before the tenth day after the service thereof and shall transmit, annexed thereto, a statement specifying:

(a) The names of the sureties in and the name of the replevin bond and the name or names of the witnesses thereto;

(b) The place of residence and occupation of the sureties;

(c) The number, quantity and quality of the articles of property of which he has taken possession, and, in case he has taken possession of only a portion of the property and cannot take possession of the residue, the articles of which he cannot take possession and the reason therefor. [O. 1077.]

Damages on  
judgment  
by default

871

**476.** Where the plaintiff is entitled to sign judgment by default he may sign final judgment for five dollars in respect of any claim for damages, but shall not be entitled to recover a larger sum as damages except upon an assessment before a judge or jury or upon filing the written consent of the defendant or his solicitor and an affidavit verifying the signature to such consent. [O. 1079.]

#### MANDAMUS.

*Mandamus*  
on motion

874

**477.** A *mandamus* may be granted by judgment or by order on motion to a judge. A writ of *mandamus* shall not be issued, but the judgment or order shall have the same effect as a writ of *mandamus* formerly had. [411; E. 722; O. 1080.]

*Mandamus*  
in action

877

**478.** In any action the plaintiff may claim in the statement of claim, either alone or together with any other relief, a *mandamus* commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested. [407; E. 719; O. 1081.]

Judgment

873

**479.** If judgment is given for the plaintiff, the court or judge may thereby command the defendant, either forthwith or on the expiration of such time and upon such terms as may seem just, to perform the duty in question. The time for the performance of the duty may be extended by the court or a judge. [408; E. 721; O. 1083.]



876 **480.** Nothing in the three preceding Rules contained shall take away the jurisdiction of the Supreme Court in cases where the prerogative writ of *mandamus* might formerly have been granted, but in such cases, in lieu of such writ, an order of *mandamus* may be made on motion without action. [O. 1084.] Jurisdiction to grant prerogative writ

878 **481.** Any person directed to do any act by an order of *mandamus* who, having been duly served with such order, fails to comply with the terms thereof, may be proceeded against for contempt of court. [O. 1085.] Non-compliance with order

INJUNCTION.

877 **482.** An injunction may be granted by judgment or order. A writ of injunction shall not be issued, but the judgment or order shall have the same effect as a writ of injunction formerly had. [405; E. 667; O. 1094.] Writ of injunction abolished

INTERIM PRESERVATION OF PROPERTY, ETC.

888 **483.** Where, by any contract, a *prima facie* case of liability is established and there is alleged, as matter of defence, a right to be relieved wholly or in part from such liability, a judge may make an order for the preservation or interim custody of the subject matter of the litigation or may order that the amount in dispute be brought into court or otherwise secured. [399; E. 657; O. 1095.] Order for interim preservation of property

889 **484.** A judge may upon the application of any party and upon such terms as may seem just make any order for the detention or preservation of property, being the subject of the action, or for the inspection of any property, the inspection of which is necessary for the proper determination of the question in dispute, and for all or any of the purposes aforesaid may authorize any person or persons to enter upon any land or into any building in the possession of a party, and may authorize any samples to be taken or any observation to be made or experiment to be tried which may seem necessary or expedient for the purpose of obtaining full information or evidence. [401; E. 659; O. 1096.] Order for detention and inspection of property

889 **485.** A judge may, on the application of a party, order any person or persons named in the order to sell in such manner and on such terms as may seem just, any goods, wares or merchandise which may be of a perishable nature or likely to be injured from keeping, or which for any other reason it may be desirable to have sold at once. [400; E. 658; O. 1097.] Sale of perishable goods

**486.** The application may be made by the plaintiff at any time after his right appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise. [399; E. 663; O. 1098.] Time of making application

892 **487.** Where an action is brought, or a defendant, by way of counterclaim, seeks to recover specific property other than land and the party with whom such recovery is sought does not Amount of security claimed may be paid into court and property delivered up

dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise a security for money, a judge, at any time after such last mentioned claim appears from the pleadings or, if there be no pleadings, by affidavit or otherwise, may order that the party claiming to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed and such further sum, if any, for interest and costs as the judge may direct and that, upon such payment into court being made, the property claimed be given up to the party claiming it. [403; E. 664; O. 1099.]

## PROHIBITION.

Application  
for prohibition  
on motion

892

**488.** Prohibition may be granted by judgment or order upon motion to a judge. A writ of prohibition shall not be issued but the judgment or order shall have the same effect as a writ of prohibition formerly had. [O. 1100.]

## INTERPLEADER.

When relief  
granted

890

**489.** Relief by way of interpleader may be granted:

(a) Where the person seeking relief (hereinafter called the applicant) is under liability for any debt, money, goods or chattels for or in respect of which he is or expects to be sued by two or more persons (hereinafter called the claimants) making adverse claim thereto;

(b) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the court and claim is made to any goods (including money and choses in action) taken or intended to be taken in execution or under attachment or to the proceeds or value thereof by (a) any person other than the person against whom the process is issued, (b) any person claiming as landlord for rent, or (c) the execution or attachment debtor claiming the benefit of any exemption from seizure allowed by law. [431; E. 850; O. 1103.]

Claims of third  
parties to goods  
taken in  
execution

910

**490.** Where a claim is made to or in respect of any goods taken in execution under the process of the court, it shall be in writing and upon the receipt of the claim the sheriff or officer shall forthwith give notice in writing thereof to the execution creditor, and the execution creditor shall within four days after receiving the notice give notice in writing to the sheriff or officer that he admits or disputes the claim. If the execution creditor admits the title of the claimant and gives such notice, he shall only be liable to such sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim. [432; E. 864a; O. 1115.]

Notice of motion  
by sheriff for  
interpleader  
order

910

Withdrawal  
of claim

**491.** Where the execution creditor does not in due time as directed by the last preceding Rule admit or dispute the title of the claimant to the goods and the claimant does not withdraw his claim thereto by notice in writing to the sheriff or officer, the sheriff may give notice of motion for an interpleader order



and should the claimant withdraw his claim by notice in writing to the sheriff or officer or should the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such motion, and at the same time give notice of such admission to the claimant, the judge may in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges and expenses as may be just and reasonable. [433; E. 864; O. 1116.]

**492.** When the execution creditor has given notice to the sheriff or officer that he admits the claim of the claimant, the sheriff may thereupon withdraw from the possession of the goods claimed and may apply for an order protecting him from any action in respect of the said seizure and possession of the said goods, and the judge may make such order as may be just and reasonable in respect of the same:

Provided always that the claimant shall receive notice of such intended application and, if he desires it, may attend the hearing of the same and, if he attends, the judge may in and for the purposes of such application make all such orders as to costs as may be just and reasonable. [864 (b).]

**493.** The applicant shall satisfy a judge by affidavit or otherwise:

(a) That he claims no interest in the subject matter in dispute other than for charges or costs;

(b) That he does not collude with any of the claimants;

(c) That he is willing to pay or transfer the subject matter into court or to dispose of it as the judge may direct. [434; E. 851; O. 1104.]

**494.** The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another. [435; E. 852; O. 1105.]

**495.** Where the applicant is a defendant, application for relief may be made at any time after service of the statement of claim and the judge may stay all further proceedings in the action. [436 & 438; E. 853 & 855; O. 1106.]

**496.** The applicant may make a motion calling on the claimants to appear and state the nature and particulars of their claims and either to maintain or relinquish them. [437; E. 854; O. 1107.]

**497.** Where a claimant does not appear on the motion after having been served with a notice of motion calling on him to appear and maintain or relinquish his claim, or, having appeared, neglects or refuses to comply with any order made thereafter, a judge may make an order declaring him and all persons claiming under him to be forever barred as against the

applicant and all persons claiming under him, but the order shall not affect the rights of the claimants as between themselves. [442; E. 859; O. 1108.]

Order upon  
motion

907

**498.** Where the claimants appear on the motion, the judge may order that any claimant be made a defendant in any action already commenced in respect of the subject matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried and in the latter case may direct which of the claimants shall be plaintiff and which defendant. [439; E. 856; O. 1109.]

Disposal of  
matters in  
summary  
manner

902

**499.** The judge may with the consent of both claimants or on the request of any claimant, if having regard to the value of the subject matter in dispute it seems desirable so to do, dispose of the merits of their claims and, subject to appeal, decide the same in a summary manner and on such terms as may seem just. [440; E. 857; O. 1110.]

Questions  
of law

904

**500.** Where the question is one of law and the facts are not in dispute, the judge may decide the question without directing the trial of an issue, or may order that a special case be stated for the opinion of the court. [441; E. 858; O. 1111.]

Order for sale  
of goods seized  
in execution

909

**501.** Where goods or chattels have been seized in execution or attachment by a sheriff and any claimant alleges that he is entitled under a bill of sale or otherwise to the goods by way of security for debt, the judge may order the sale of the whole or a part thereof and direct the application of the proceeds of the sale in such manner and upon such terms as may seem just. [444; E. 861; O. 1112.]

Final  
disposition of  
interpleader  
proceedings

**502.** The judge who tries the issue may finally dispose of the interpleader proceedings, including all costs not otherwise provided for. [445; E. 862; O. 1114.]

Only one  
application  
where more  
than one  
execution

913

**503.** In case a sheriff has more than one execution against the same property, he shall not make a separate application in each case, but he may make one application and may make all the execution creditors parties. [446 pt.; O. 1118.]

Execution from  
several courts,  
application to  
supreme court

914

**504.** Where there are executions from different courts against the same property whether on behalf of the same plaintiff or of different plaintiffs, the application for interpleader shall be made to a judge of the Supreme Court, and such judge shall dispose of the whole matter as if all of the executions against the property had been issued from the said court. [O. 1119.]

Title of order in  
several actions

912

**505.** Where it is necessary or expedient to make an order in several actions or matters, the order may be made and shall be intituled in all such actions or matters and, subject to the right of appeal, shall be binding on all the parties. [446 pt.; E. 863; O. 1117.]



916

**506.** Where an issue is directed to be tried, the judge may order either party to pay forthwith the sheriff's costs incurred in consequence of the adverse claim.

When issue is ordered, sheriff's costs to be first lien on property exigible

(2) The sheriff's costs shall be a first charge upon the goods which may be found in the issue to be subject to the execution, and in addition and without prejudice to the said charge the sheriff may after the issue has been directed to be tried tax such costs and may serve a copy of the certificate of taxation upon each of the parties to the issue and the party who has been awarded costs upon the issue shall tax such sheriff's costs as part of his costs of the cause and upon receipt thereof shall pay over the same to the sheriff, unless he has been previously paid.

Sheriff may tax costs and serve copy of certificate on each party

(3) Where after the service of the certificate the party succeeding upon the issue has not been awarded costs or neglects or refuses to tax the sheriff's costs, the sheriff may obtain an order that such party shall pay the same.

The successful party liable to sheriff for costs

(4) Where the proceedings are compromised between the parties thereto, the costs of the sheriff shall be paid by the party by whom the execution was issued. [O. 1120.]

Upon compromise, person issuing execution liable to the sheriff for costs

918

**507.** Where after the seizure an issue is directed and the property seized remains, pending the trial of the issue, in the custody of the sheriff who seized the same, a judge may make an order for the payment to the sheriff of such sum for his trouble in relation to the custody of the property as the judge deems reasonable; and the sheriff shall have a lien upon the property for payment of the same in the event of the issue being decided against the claimant to the extent to which such issue shall be so decided. [O. 1121.]

Payment to sheriff for custody

**508.** Pending the adjudication on a claim the sheriff may upon sufficient security being given to him by bond or otherwise for the delivery to him of the property so taken or the value thereof when demanded, permit the claimant to retain possession of the same until there shall be final adjudication in respect thereof; but in every such case the sheriff or other officer may at any time resume the actual and absolute possession and custody of the said property notwithstanding such bond or security. Horses, cattle, sheep or any perishable goods, the subject of interpleader, may at the request of either party and upon his furnishing sufficient security or by order of a judge be sold by the seizing officer at public auction to the highest bidder upon such terms as to notice and otherwise as the judge may direct. [447.]

Claimant permitted to retain possession until adjudication

911

**509.** A judge may in and for the purposes of an interpleader proceeding make all such orders respecting the satisfaction or payment of any lien or charges of the applicant and as to costs and all other matters as may be just and reasonable. [448; E. 864; O. 1122.]

Costs, etc.

921

**510.** Where the amount claimed under or by virtue of executions in the sheriff's hands issued out of one or more courts does not exceed the sum of \$600 exclusive of interest and sher-

When issue may be tried in district court

iff's costs or where the goods seized are not in the opinion of the judge or other person making the order of the value of more than \$600, the order directing an issue to be tried may direct that the issue shall be drawn up and tried in the District Court of such district as he shall direct, and in such case the issue shall be drawn up, filed and tried in such district court, which shall, where any of the executions were issued out of the Supreme Court, have jurisdiction in the premises as fully as though the same had issued out of the District Court.

(2) Where an application is made for an order upon this Rule upon the ground that the goods seized are not of the value of more than \$600, a list of the goods and of the values placed upon them shall be set out in the affidavits upon which the application is based. [O. 1125.]

Costs in  
interpleader  
proceedings

**511.** The costs of all proceedings on or following interpleader proceedings shall, unless otherwise ordered, be ascertained and taxed by reference to the value of the property in question in such proceedings.

#### OFFICERS AND OFFICES.

Officers

**512.** Except during vacations and on holidays and Saturdays the offices of the Supreme Court of Alberta and of the district courts shall be kept open from 10 a.m. to 4 p.m. [O. 9.]

**513.** The offices of the Supreme Court of Alberta and of the district courts shall on Saturdays and during vacations be kept open from 10 a.m. to 1 p.m. [O. 10.]

Personal  
attendance  
necessary to  
transaction of  
business

**514.** No business shall be transacted in any of the offices of the courts, either in procuring or issuing process or in entering judgments or taking any proceeding whatever in a cause or matter, unless upon the personal attendance of the party on whose behalf such business is required to be transacted or of the counsel or solicitor of such party or the clerk or agent of the solicitor or the clerk of the agent: [O. 11.]

Provided always that the clerk of the court may issue summonses, statements of claim, file defences or any documents, make all necessary searches, note defendants in default, enter default judgments, tax costs in default judgments, issue executions, and perform other *ex parte* transactions of a like nature in all cases in which the necessary documents are forwarded with necessary and specific instructions by solicitors whose place of business is more than three miles from the clerk's office to the said clerk of the court, fully completed and without blanks except dates, and accompanied by fully prepaid and addressed envelopes for the return of documents.

Absence of  
officers

**515.** In case of the absence or illness of any officer to whom any special duty is assigned the duty may be performed by such other officer as may be designated for that purpose by the chief justice, or, in his absence, the senior judge of the Supreme Court. [O. 13.]



26 **516.** A clerk, deputy clerk or process issuer being absent or ill may in writing appoint some person to act for him and such person shall during such absence or illness as aforesaid have, use and exercise all the powers, duties and functions of the officer appointing him, but the responsibility of such last mentioned officer shall not cease by reason of such appointment. [7 Ed. VII., c. 5, s. 6; 9 Ed. VII., c. 4, s. 9.]

26 **517.** The office in which the first document in a cause or Office in which proceedings commenced matter is required to be filed shall be deemed to be the office in which the cause or matter is commenced.

(2) Proceedings commenced in the office of a process issuer shall for the purposes of this Rule be deemed to have been commenced in the office of the clerk of the court of the judicial district in which the process issuer resides. [O. 14 & 15.]

176/178 **518.** Unless otherwise ordered all proceedings in a cause or Carrying on of proceedings matter shall be carried on in the office in which the cause or matter is commenced. [O. 15.]

" **519.** Each clerk of court and deputy clerk and process issuer Issue of statement of claim by clerk shall issue any statement of claim required for the commencement of an action upon receiving a copy thereof to be filed in his office. [M. 12.]

" **520.** Each clerk of court, deputy clerk and process issuer Seal of clerk. etc. shall have a seal and he shall seal therewith and sign all writs, statements of claim and process issued by him. [M. 13.]

14 **521.** Every clerk and deputy clerk in addition to any other Duties of clerk and deputy clerk duties which he may be required by law to perform, shall: 14

(a) Receive, file and have the custody of all pleadings, petitions, appearances, reports, depositions, affidavits, bonds and other papers in every action, suit, matter and proceeding in the court of which he is clerk or deputy clerk, and make or cause to be made entries thereof in the proper books;

(b) Amend pleadings; enter notes of default in pleadings and give certificates thereof;

(c) Have the care and custody of all documents required or ordered to be deposited for safe keeping or otherwise under any order of the court or any Act of Parliament, and make or cause to be made entries thereof in proper books;

(d) Issue all writs, commissions and orders obtainable on *praecipe*; issue writs of execution and other process under judgments or orders;

(e) Certify proceedings; examine and authenticate office copies of pleadings and other proceedings; prepare, sign and issue certificates for registration; receive commissions and attend the opening of same.

(f) Sign all judgments required to be signed in his office; issue all such judgments and all orders pronounced within the judicial district of which he is clerk or deputy clerk and enter

such thereof as by the Rules and practice are required to be entered; have the custody of judgment and order books;

(g) Set down actions for trial, motions, appeals, special cases and other business coming before the court or a judge thereof;

(h) Attend with records, exhibits and papers on the court or judges thereof;

(i) Act by himself or by some person designated by him as clerk of the court or to a judge at any sitting for the trial of civil or criminal causes, matters or proceedings in court, and in chambers where there is no clerk in chambers; enter in proper books a record of all such proceedings and settle and issue all judgments and settle and sign all orders pronounced thereat;

(j) Keep an account or accounts of all fines, fees and moneys payable to or paid into and out of court in proper and approved books;

(k) Tax costs and act as examiner and as referee when required;

(l) Keep such books as are required by these Rules or by the Attorney General and do and perform all such other acts and duties as may be required of him by the judges or by the Attorney General or by any Act or Ordinance.

Duties of  
process issuer

**522.** A process issuer shall be supplied by the clerk of the court or deputy clerk with blank forms, original and *mesne* processes and shall issue same. He shall sign each one before issuing it, collect the fees payable in respect thereof and make the proper entries in the record book. Immediately upon issuing process by which an action or proceeding is commenced he shall mail to the clerk of the court or deputy clerk from whom he received the process the copy thereof left with him, if any, or, if no copy be filed, then a notice setting out the style of cause, the nature of the process, the date of same and the particulars in regard to the claim. [7 Ed. VII., c. 5, s. 6, s.s. 3.]

Duties of clerk  
in chambers

**523.** The clerk in chambers shall be attached to the office of the clerk of the court and shall perform such duties as may be assigned to him by the clerk or by the Rules of Court. He shall attend all sittings of a judge in chambers and enter in a proper book a complete record of all proceedings; he shall settle and sign all orders and settle and issue all judgments made by a judge in chambers. [O. 634 pt.]

Registrars

**524.** There shall be one or more registrars of the Supreme Court.

Duties of  
registrar

**525.** A registrar of the court shall perform such duties as may be required of him under any Rule of court or assigned to him from time to time by the judges or by the Attorney General and shall:

(a) Receive and file notices of appeal and of motions to the appellate division of the court and all papers and documents in connection therewith;



(b) Forthwith, after appeal books in a case have been filed, transmit to each judge before whom the appeal is to be heard, a copy of the appeal book;

(c) Enter in a proper book provided for that purpose a list of appeals and motions set down for hearing at each sitting of the court; make out and post a list of such appeals and motions and furnish each judge of the court with a copy thereof;

(d) Have control and custody of appeal books, records, exhibits, affidavits and papers relating to appeals, motions and matters before the court until the conclusion of the same;

(e) Attend with records, exhibits and papers on the court or the judges thereof and keep a full and complete record of all proceedings before the said court or the judges thereof, such record to show the names of the judges present, the date, the style of cause in each case, the names of counsel and for whom appearing, the particulars of the appeal or motion, the result, the judgment or judgments, if any, given, and the time occupied in hearing;

(f) Settle and issue all judgments and settle and sign all orders made by the court at which he attended as registrar and all orders made by a judge thereof, and tax the costs of motions and appeals before such court;

(g) Unless otherwise ordered, at the conclusion of an appeal and after issue of the order or judgment and the taxation of costs, transmit to the office in which the action or proceeding was commenced all papers relating thereto except the appeal books; retain possession of the appeal books in appeals entered for hearing at the place where he has his office.

**526.** Official shorthand reporters heretofore appointed or who shall hereafter be appointed, shall be officers of the court and shall perform such duties as may be assigned to them by Rule of court or by the Attorney General.

**527.** All copies of evidence and of judgments required to be furnished by official shorthand reporters, shall be ordered in writing through the clerk of the Supreme Court at the place where the reporter taking the evidence resides. Upon payment to him of the amount required for such copies, or upon production to him of the reporter's receipt for the amount, the clerk of the court may deliver the copies to the person ordering the same.

**528.** Each shorthand reporter employed to take evidence in actions, suits, matters and proceedings before the court or a judge shall furnish copies of his notes of evidence in the order in which same are required of him, unless otherwise ordered by a judge, and, upon completion thereof, shall deposit the same, certified by him, with the clerk through whom he received the order, and shall also at the same time leave with the said clerk a memorandum showing the number of folios and the fees payable thereon.

Fee for copies

**529.** The fees payable for copies of evidence shall be the fees fixed by the Attorney General from time to time.

Deposit for copies

**530.** The reporter from whom copies of notes of evidence are ordered in any instance may require that a reasonable deposit be made to cover the cost of such copies and shall notify the clerk of the amount thereof and the clerk shall notify the party ordering the evidence of the requirement of the reporter and in such instance the reporter shall not be required to make such copies until such deposit be made with the clerk.

Disputes as to fees or deposit

**531.** Any dispute regarding the amount of fees or deposit shall be settled by the clerk subject to an appeal to a judge.

Record of copies, etc.

**532.** The clerk shall keep a record of all copies of evidence and judgments ordered and of the fees received for same.

#### RULES RELATING TO SIZE OF RECORDS.

Size of rolls and records

**533.** All rolls and records shall be upon parchment or paper, not exceeding when unfolded eleven inches in length by eight and one-half inches in width, and shall (except as to any endorsement) be printed, written or typewritten on one side of each sheet only. Provided, that any clerk or registrar may under any special circumstances accept any roll or record which is not in conformity with this Rule. (This Rule is to be taken to apply in all administration, probate and guardianship matters.)

#### EXPERTS.

Experts

**534.** The court or a judge may obtain the assistance of merchants, engineers, accountants, actuaries or scientific persons, in such way as may be thought fit, the better to enable any matter in any cause or proceeding to be determined and may act on the certificate of such person or persons. [490; E. 781; O. 94; M. 164.]

#### THE SOLICITORS AND AGENTS' BOOK.

Solicitors and agents' book

**535.** Every clerk and deputy clerk of the Supreme Court shall keep in his office a book to be called "The Solicitors and Agents' Book," which may be inspected free of charge, in which each solicitor residing elsewhere than in the city or town in which the clerk's or deputy clerk's office is situate may cause to be entered the name of a solicitor having an office in such city or town, upon whom may be served all pleadings, notices, petitions, orders, warrants and other documents and written communications in relation to business conducted in such clerk's or deputy clerk's office which may require to be served on such solicitor. [O. 90 & 92; M. 162.]

#### LOCAL JUDGE.

Powers of local judge

**536.** A local judge of the Supreme Court shall, in actions brought or proceedings taken or proposed to be brought or taken

27.  
34.



in the Supreme Court in the judicial district of which he is judge or acting judge, possess the like powers of a judge of the Supreme Court sitting in chambers, save and except in respect of the matters following, viz.:

(1) All matters which by any statute or ordinance are required to be done by a judge;

(2) All matters relating to criminal proceedings or the liberty of the subject;

(3) Appeals and applications in the nature of appeals, applications concerning the hearing of appeals and applications to vary or rescind an order made by a judge;

(4) Application for advice by an executor, administrator or trustee;

(5) Applications to enable minors with the approbation of the court to make binding settlements of their real and personal estate on marriage; and in regard to questions submitted for the opinion of the court in the form of special cases on the part of such persons as may by themselves, their committees or guardians or otherwise concur therein;

(6) Proceedings as to partition and sale of real estate;

(7) Opposed applications respecting the guardianship of the person or property of infants;

(8) Applications for *certiorari*, prohibition, *mandamus*, or injunction, except as hereinafter provided;

(9) The payment of money out of court or dispensing with payment of money into court in administration and partition matters;

(10) And (unless by consent of the parties) the following proceedings and matters, that is to say:

(a) The making of orders for reference;

(b) Staying proceedings after verdict or on judgment after trial or hearing before a judge. [Cf. O. 42.]

**537.** Every local judge may refer any matter pending before him in chambers to a judge of the Supreme Court for decision and such judge may dispose of or refer back the same in whole or in part. [O. 45 (2).]

References by  
local judge

35

**538.** A local judge may in cases of emergency grant an interlocutory injunction in any action in the Supreme Court brought in the judicial district for which he is judge or in any district in which he is acting as District Court judge under the provisions of *The District Courts Act*, on proof to the satisfaction of the judge that the delay required for an application to a judge of the Supreme Court is likely to involve a failure of justice. Such injunction shall remain in force for such period not exceeding twelve days, as the local judge may direct, unless continued by the local judge under the Rule next following or by a judge of the Supreme Court; and such injunction shall have the same force and effect and may be continued, varied, dissolved and otherwise dealt with by a judge of the Supreme

Interlocutory  
injunction by  
local judge

Court as if it had been originally granted by judgment or order of such court or of a judge thereof. [7 Ed. VII, c. 4, s. 43; O. 46; M. 88.]

Mutual  
consent to  
hearing by  
local judge

**539.** In any action in which a local judge has granted an interlocutory injunction under the next preceding Rule and in which all parties interested consent thereto, the local judge may hear, determine and dispose of any motion to continue, vary, dissolve or otherwise deal with the injunction, and may impose such terms and conditions as to costs and other like matter as may seem meet. [Ib. s.s. 2; O. 46 (2).]

**540.** Where all parties consent to the hearing, determination and disposal by a local judge, such local judge shall in actions brought and proceedings taken in the Supreme Court in the judicial district of which he is judge or acting judge, possess the like powers of a judge of the Supreme Court for hearing, determining and disposing of all applications and other matters, including trials of actions. [D.C. Act. s. 44.]

Power of  
master in  
chambers

**541.** A master in chambers in regard to all actions brought or proposed to be brought in the Supreme Court shall have power and be required to do all such things, transact all such business and exercise all such authority and jurisdiction in respect to the same as may be done, transacted or exercised under and by virtue of these Rules by any local judge of the Supreme Court, with or without the consent of the parties, except the trial of actions.

Official  
referee

**542.** Every local judge, master in chambers, clerk or deputy clerk of the Supreme Court and such other persons as may be appointed by the Lieutenant Governor in Council shall be an official referee for the purposes of references by the Supreme Court or a judge thereof.

#### SERVICE OF DOCUMENTS.

Personal  
services

**543.** Personal service where required shall be effected by leaving with the person to be served a true copy of the document required to be served and where personal service of any document or written communication is required by these Rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the service of a statement of claim. [23; E. 1016; 166; O. 245, 145 & 249.]

Service where  
personal  
service not  
required

**544.** If an address for service is furnished all documents not required to be served personally shall be deemed to be sufficiently served if a true copy is left at the said address. [E. 1013; O. 330.]

Solicitor's  
acceptance  
need not be  
verified

**545.** Admissions and acceptances of service of any document upon the opposite solicitor need not be verified by affidavit [25; O. 328; M. 360.]



294 **546.** All documents which do not require to be served personally upon the party affected thereby shall be served upon his solicitor when residing in the city or town where the office of the clerk in which the proceedings are being carried on is situate, or if the solicitor does not reside in such city or town, upon the agent or such solicitor named in "The Solicitors and Agents' Book," to be kept under these Rules, unless a judge or the officer before whom any such proceeding is had, shall otherwise direct. [E. 1018; O. 329; M. 361.]

297 **547.** In all cases where a plaintiff in person has caused a statement of claim to be issued or a defendant in person has delivered his defence on demand of notice and subsequently by a solicitor gives notice in writing to the opposite party or the solicitor or agent of such party that the solicitor giving the notice is authorized to act as solicitor for the party on whose behalf the notice is given, all other documents not required to be served personally shall thereafter be served upon such last mentioned solicitor. [12; O. 336; M. 364.]

**548.** Where at the time of attendance to serve any paper or document the office of the solicitor for the party upon whom the service is sought to be made is closed or no one is in attendance therein for receiving papers or documents served, service of the paper or document may be effected by mailing the same at any time during the same day, addressed to the solicitor at his office by registered mail postage prepaid, and the service shall be deemed to have been effected at the time of the attendance for that purpose at the office of the solicitor. [O. 331.]

298 **549.** In any action by a mortgagee, or other person having a charge on real property, for foreclosure or sale, to which action any judgment creditor of the mortgagor or of the person whose property is liable to the charge, is required to be served, service upon such judgment creditor shall not be necessary if service is effected upon his solicitor in the action in which the judgment has been recovered. [O. 332.]

269 **550.** Where personal service of any document is required and it is made to appear to a judge that prompt personal service cannot be effected, the judge may make such order for substituted or other service or for the substitution for service of notice by letter, public advertisement or otherwise as may be just, or may dispense with service. [24; E. 1017; O. 334.]

TIME.

384 **551.** Where by these Rules or any judgment or order time for doing any act or taking any proceedings is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months, unless otherwise expressed. [E. 961; O. 342.]

Holidays

388

**552.** Where any period less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, holidays, as defined by *The Interpretation Act*, shall not be reckoned in the computation of such period. [546; E. 962; O. 343.]

Clear days

386/1

**553.** Where a number of days not expressed to be "clear" days is prescribed by the Rules or practice of the court, the same shall be reckoned exclusively of the first day and inclusively of the last day.

(2) Where the days are expressed to be "clear" days or where the term "at least" is added, both days shall be excluded. [545; E. 972; O. 344.]

Time expiring  
on Sunday,  
etc.

388

**554.** Where the time for doing any act or taking any proceeding expires on a Sunday or other day on which the offices are closed, such act or proceeding shall so far as regards the time of doing or taking the same be held to be duly done or taken if done or taken on the day on which the offices shall next be open. [547; E. 963; O. 345.]

Time for  
giving security  
for costs,  
when not to  
be reckoned

389

**555.** The day on which an order that a party do give security for costs is served and the time until and including the day on which the security is given shall not be reckoned in the computation of the time allowed for taking any proceeding in the action. [E. 966; O. 346.]

Enlargement  
or abridgment  
of time

396

**556.** The court or a judge may enlarge or abridge the time appointed by these Rules or any Rules relating to time or fixed by any order for doing any act or taking any proceeding upon such terms as may be just; and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. [548; E. 967; O. 353.]

Enlargement  
of time by  
consent

390

**557.** The time for delivering, amending or filing any pleading, answer or other document may be enlarged by consent in writing without application to the court or a judge. [E. 968; O. 347.]

Two clear  
days' notice

391

**558.** Unless the court or a judge gives leave to the contrary there shall be at least two clear days between the service of notice of motion or petition and the day for hearing. [460 & 475; 700 & 737; O. 348.]

Time for  
service of  
pleadings, etc.

392

**559.** Service of pleadings, notices, orders and other proceedings shall, unless otherwise ordered, be effected on Saturdays before one o'clock in the afternoon and on other days before the hour of five o'clock in the afternoon. Service effected after five o'clock on any week day except Saturday shall be deemed to have been effected on the following day. Service effected after one o'clock on Saturday shall be deemed to have been effected on the following Monday. [544; E. 971; O. 349.]



393 **560.** An attendance on a motion in chambers or on an appointment before a master or other officer for half an hour next immediately following the time of the return thereof shall, in the absence of the opposite party, be deemed a sufficient attendance. [O. 350.] Half an hour's attendance on a motion in chambers or appointment is sufficient

395 **561.** Unless otherwise directed by the court or a judge, no trials shall be held or contested motions heard during vacation and the time of vacation shall not be reckoned in the computation of the times appointed by order or allowed by these Rules for amending or delivering any pleading: Vacation, time of, when not to be reckoned

Provided, however, that in default of defence being delivered the plaintiff may proceed as hereinbefore provided unless the defendant filed an affidavit stating that in the belief of the deponent the defendant has a good defence on the merits and intends to defend the action. [549; E. 965; O. 352.]

397 **562.** The vacations of the Supreme and District Courts shall be: Vacations in Supreme and District Courts

(a) The long vacation to consist of the months of July and August;

(b) The Christmas vacation to consist of the period from the 22nd day of December to the 6th day of the following January, both days inclusive. [549; E. 948; O. 354.]

396 **563.** A party suing or defending by a solicitor may change his solicitor by filing in the office in which the action or matter is being carried on and serving upon the opposite party or his solicitor notice of such change; and until such notice is filed and served the former solicitor shall be considered as the solicitor of the party. [11; E. 44; O. 335.] Change of solicitors

FORM OF JUDGMENTS AND ORDERS.

659 **564.** Judgments and orders shall be divided into convenient paragraphs and such paragraphs shall be numbered consecutively. [O. 620.] Judgments and orders to be divided into paragraphs

653 **565.** It shall not be necessary in any judgment or order to reserve liberty to apply, but any party may apply to the court from time to time as he may be advised. [O. 622.] Liberty to apply need not be reserved

661 **566.** Every judgment or order shall show on its face the day of the week, month and year on which it was given or made, and if given or made by an officer or by a judge or judges shall show the name or names of such judge or judges. [467; E. 708; O. 623 & 629.] Date of judgment and name of judge giving

662 **567.** Judgments and orders of the Appellate Division of the Supreme Court shall be settled by the registrar at the place where the case is argued or the order made. Settling minutes and variation thereof

(2) Judgments and orders of a single judge shall be settled by the clerk or deputy clerk of the court for the judicial district within which the judgment is pronounced or order made.

(3) The minutes of any judgment or order when so settled may be varied by the court or a judge on the application of either party. [O. 625.]

Appointments  
to settle  
minutes

b43

**568.** Notice of settling minutes of a judgment or order shall not be given unless by direction of the officer by whom the judgment or order is to be settled, nor until the proposed minutes of the judgment or order have been prepared by or delivered to the officer by whom the same are to be settled; the notice shall be by an appointment signed by him, a copy whereof shall be served. The proposed minutes shall remain in his office for inspection until settled or passed and any party may take a copy thereof. [O. 626.]

Procedure  
where party  
makes default

b44

**569.** Where a notice is given to settle minutes of a judgment or order and the party served attends thereon, but the party giving the notice does not attend or is not prepared to proceed, the officer settling the judgment or order may proceed *ex parte* to settle the minutes or may in his discretion order the party giving the notice to pay the other party the costs of his attendance; or if a party served asks for delay, the officer may grant the delay on such terms as he thinks reasonable as to payment of costs or otherwise. [O. 627.]

Signature of  
judgments  
and orders

b45

**570.** Judgments or orders of the Appellate Division of the Supreme Court shall be signed by the registrar or acting registrar thereof.

(2) Judgments and orders of a court other than the Appellate Division of the Supreme Court and judgments by default shall be signed by the clerk or deputy clerk of the court in whose office the action or proceeding was commenced, unless otherwise ordered.

(3) Orders made by a judge or master in chambers may be signed by the chamber clerk or by the clerk or deputy clerk of the court in whose office the action or proceeding was commenced, but the judge making an order may himself sign the same.

(4) Orders made by an officer sitting in chambers shall be signed by him. [O. 628, 634.]

Date of  
judgment  
or order  
pronounced  
or directed  
by judge

b46

**571.** Every judgment or order pronounced or directed by the court or a judge shall be dated as of the day on which such judgment or order is pronounced or directed and shall take effect from that date unless otherwise directed. [328 & 329; E. 571; O. 629.]

Signing of  
judgment

b47

**572.** In all cases the judgment pronounced by the court may be signed forthwith, unless otherwise ordered. [O. 630.]

**573.** Where judgment may be signed upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced and if the same be regular and contain all that is by law required, he shall enter judgment accordingly. [331; E. 574; O. 631.]

b50



651 **574.** Where judgment may be signed pursuant to any order or certificate, the production of such order or certificate shall be a sufficient authority to the officer to sign judgment accordingly upon the condition, if any, specified by such order or certificate. [332; E. 575; O. 632.]

654 **575.** Every judgment or order shall be entered by filing a true copy thereof with the officer issuing the same, who shall make a note of such entry and the date thereof at the foot of such judgment or order. [327; E. 569; O. 635, 636, 637.] Entry of judgment

652 **576.** Where a judgment or order is obtained upon a condition and the condition is not complied with the judgment or order shall be deemed to have been waived or abandoned as far as the same is beneficial to the person obtaining the same, and any person interested in the matter on the breach or non-performance of the condition may either take such proceedings as the judgment or order in such case may warrant, or such proceedings as might have been taken if the judgment or order had not been made, unless the court or a judge shall otherwise direct. [337; E. 580; O. 638.] Orders obtained on condition

ENFORCEMENT OF JUDGMENT AND ORDERS.

WRITS OF EXECUTION.

**577.** (a) "Judgment creditor" shall mean the party or person who is entitled to receive payment or to enforce a judgment or order. Interpretation "Judgment creditor"

(b) "Judgment debtor" or "debtor" shall mean the party or person to make payment under any judgment or order or against whom the same may be enforced. [O. 835.] "Judgment debtor"

690 **578.** An order of the court or a judge may be enforced against all persons bound thereby in the same manner as a judgment to the same effect. [350; E. 602.] Orders enforceable like judgments.

691 **579.** Any judgment for the payment of money into court may be enforced by any mode by which a judgment for the payment of money to a person may be enforced. [E. 582; O. 839.] Enforcement of judgment for payment into court

700 **580.** Where money other than for costs is recovered by or on behalf of an infant or a person of unsound mind by his guardian, next friend or committee or on behalf of a class, the same shall, unless otherwise ordered, be paid into court subject to further order, and no payment to the guardian, next friend or committee of moneys due to such infant or person of unsound mind or person having the conduct of proceedings on behalf of the class, otherwise than for the costs of the action, shall be a valid discharge as against the infant or person of unsound mind or the class. [O. 840.] Payment into court of moneys due to infants, etc.

Endorsement  
on writ of  
execution  
for levying  
moneys due  
to infants, etc.

**581.** Every writ of execution for the levying of moneys directed to be paid into court shall be endorsed by the officer issuing the same with the following notice: "All moneys made under this execution, other than costs, are to be paid into court by the sheriff." [O. 840.]

Judgment for  
conditional  
relief

**582.** Where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency and demand made upon the party against whom he is entitled to relief, apply to the court or a judge for leave to issue execution against such party. The court or judge may order that execution issue accordingly or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any way in which a question arising in an action may be tried. [342; E. 587; O. 841.]

Time to sue  
out *fi. fa.*  
to enforce  
payment of  
money or costs

**583.** Every person to whom any sum of money or any costs are payable under a judgment shall be entitled immediately to issue one or more writs of *fi. fa.* to enforce payment thereof, subject nevertheless as follows:

(a) If the judgment is for payment within a period therein mentioned the writ shall not be issued until after the expiration of such period unless otherwise ordered.

(b) The court or judge may at or after the time of giving judgment stay execution for such period as shall seem just, or may remove or extend any stay already granted. [338, 364; E. 595; O. 843.]

Writs to be  
against both  
goods and lands

**584.** Every writ of *fi. fa.* shall be issued against both the goods and lands of the debtor. [364; O. 844.]

*Venditioni  
exponas*

**585.** A writ of *venditioni exponas* may be issued against goods alone or against lands alone. [E. 617; O. 845.]

Writ of  
possession (of land)

**586.** A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. [339; E. 583; O. 846.]

**587.** Where, by any judgment any person therein named is directed to deliver up possession of any lands to some other person on or at any specified time after being served with the judgment, the person prosecuting the same shall, without any further order for that purpose, be entitled to issue a writ of possession on filing an affidavit showing due service of the judgment and that the same has not been obeyed. [371; E. 645; O. 847.]

**588.** A writ of possession shall have the effect of a writ of assistance as well as of a writ of *habere facias possessionem*. [O. 848.]

Separate writs  
for possession  
and money  
if desired

**589.** Upon a judgment for the recovery of land and money, whether for costs or otherwise, there may be either one writ or



separate writs of execution for the recovery of possession and for the money at the election of the party entitled to recover the same. [372; E. 646; O. 849.]

**590.** Where judgment has been entered for the recovery of specific property other than land or money, or the value thereof, the judgment creditor, where recovery or delivery of the property *in specie* is desired, shall be entitled to a writ of delivery and, in case of the property not being returned, a judge may order that the judgment debtor be arrested and detained in prison until he complies with the terms of the writ and also that the goods and chattels of the judgment debtor to double the value of the property in question be taken and kept until the further order of the court to enforce obedience to the writ, or that a writ of sequestration may issue; or, at the option of the judgment creditor, the judge may order the sheriff to make of the judgment debtor's goods the value of such property, but the judgment creditor shall, either by the same or by a separate writ of execution (to be issued in the ordinary manner) be entitled to have made of the judgment debtor's goods and lands the damages and costs awarded and interest. [340, 370; E. 647, 648; O. 852.]

Writ of delivery

695

**591.** A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment or by committal. [341; E. 585; O. 853.]

Writ of attachment or committal

696

**592.** A writ of attachment shall not be issued without the leave of the court or a judge on notice to the person against whom the attachment is to be issued. [E. 621; O. 855.]

Writ of attachment not to issue without leave

703

**593.** Writs of sequestration shall be directed to the sheriff unless otherwise ordered. [O. 860.]

Writ of sequestration

708

**594.** In case an order has been made by the court or a judge that a person be committed to gaol for contempt of court and there detained and imprisoned until such person shall have purged his said contempt, if it be made to appear that such person is in actual custody under such order, the court or judge may, upon such notice as may be directed, modify and change the order and limit the term of imprisonment under such order or grant such other relief as may in the nature and circumstances of the case seem just, but any relief that may be granted to any such person shall not relieve him from any civil liability to any other person. [O. 861.]

Relief of persons committed for contempt

**595.** Any judgment against a corporation wilfully disobeyed may, by leave of a judge, be enforced by execution against the corporate property or by attachment against the directors or other officers thereof or by writ of sequestration against their property. [Alta. 354; E. 609; N.B. 524.]

Enforcement by execution against corporate property by attachment or by writ of sequestration

**596.** If a *mandamus* granted in an action or otherwise or a mandatory order, injunction or judgment for the specific per-

Enforcement of mandamus

885

formance of any contract is not complied with, the court or a judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment has been obtained or some other person appointed by the court or judge, at the cost of the disobedient party; and, upon the act being done, the expenses incurred may be ascertained in such manner as the court or judge may direct and execution may issue for the amount so ascertained and costs. [353; E. 608; O. 862.]

Execution  
within six  
years

109 **597.** As between the original parties to a judgment or order, execution may issue at any time within six years from the date of the judgment or order. [348; E. 600; O. 863.]

Execution by  
leave of court

710

**598.** Where the six years have elapsed or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to a judge for leave to issue execution accordingly or to amend any execution already issued, and such judge may make an order to that effect or may order that any issue or question necessary to determine the rights of the parties shall be tried in any way in which a question in an action may be tried. [348; E. 601; O. 684; N.B. 146, 31.]

Execution in  
case of persons  
not parties

711

**599.** Any person not being a party to a cause or matter who obtains any order or in whose favour any order is made shall be entitled to enforce obedience to such order by the same process as if he were a party; and any person not being a party against whom obedience to any judgment or order may be enforced shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party. [351; E. 604; O. 865.]

*Praecipe*  
for writ

712

**600.** A writ of execution shall be issued or renewed only upon *praecipe*. [344; E. 590; O. 866.]

Date

717 (in 1st)

**601.** Every writ of execution shall bear date of the day on which it is issued. [346; E. 592; O. 867.]

Endorsements  
on writ

713

**602.** Every writ of execution shall be endorsed with the name and place of abode or office of business of the solicitor issuing the same, and if he issues the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be endorsed; where a solicitor is not employed, the writ shall be endorsed with a memorandum stating that the same has been issued by the plaintiff or defendant in person with the name of the city, town or other place, and also the name of the street and number, if any there be, of the house where he resides. [E. 591; O. 868.]

715

**603.** Every writ of execution for the recovery of money shall be endorsed with a direction to the sheriff or other officer or person to whom the writ is directed to levy the money really due and payable and sought to be recovered under the judg-



ment, stating the amount and also to levy interest thereon, if sought to be recovered, at the rate provided by law from the time when the judgment was entered:

Provided that in cases where there is an agreement between the parties that a higher rate of interest shall be secured by the judgment, the endorsement may be to levy at the rate so agreed. [347; E. 594; O. 869.]

**603a.** Every writ of execution for recovery of money shall be in Form E in schedule hereto with such variations as circumstances may require. 712

**604.** Unless otherwise provided by any Statute, and except for the purposes of such Statute, every writ of execution shall remain in force so long as the judgment on which it is issued remains in force. [346; E. 598; O. 872.] Currency of writ of execution

**605.** Every writ of execution issued or renewed prior to the first day of September, 1914, may be, before the expiration of two years from the date of such issue, renewed in the manner hereinafter provided and upon such renewal such writ shall, except as in the next preceding Rule provided, remain in force so long as the judgment upon which it was issued remains in force. [346; E. 598; O. 872.] Renewal of writ 718

**606.** When, for the purposes of any Statute, a writ of execution requires to be renewed, such writ or the renewed writ may at any time before the time when it requires to be renewed, be so renewed by being marked in the margin or at the foot with a memorandum signed by the clerk to the effect following: "Renewed from the.....day of....." [346; E. 598; O. 872.] 719

**607.** The sheriff shall, upon the receipt of a writ of execution or renewal thereof, endorse thereon the year, the month, the day, the hour and minute when same was received. Endorsement of date of receipt by sheriff

**608.** Upon every execution there may be levied, in addition to the sum recovered by the judgment, the poundage, fees, expenses of execution and interest and the amount recovered. [347 & 373; E. 593; O. 871.] Poundage, etc. 714

**609.** Subject to the provisions of any Statute a writ of execution shall bind the goods of the judgment debtor from the time of the delivery thereof for execution to the sheriff of the judicial district within which the goods are situate, but not so as to prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had, at the time when he acquired his title, notice that such writ had been delivered to the sheriff and remained in his hands unexecuted. [356.] Date of binding goods

**610.** Shares in any corporation having transferable shares may be seized under execution and sold thereunder in the manner hereinafter provided. [O. Statutes, 1909, c. 47, s. 10.] Seizure of shares

**611.** The sheriff on being informed on behalf of the execution creditor that the execution debtor has such shares and on being required to seize the same shall forthwith serve a copy of the execution, together with a notice that all the shares of the execution debtor are seized thereunder upon the corporation at its place of business within the province where transfers of shares may be notified and entered by the corporation so as to be valid as regards the corporation; and from the time of service the seizure shall be deemed to be made and no transfer of the shares by the execution debtor shall be valid unless and until the seizure has been discharged; and every seizure and sale made under the execution shall include all dividends, premiums, bonuses or other pecuniary profits upon the shares seized, and the same shall not, after notice as aforesaid, be paid by the bank or company to anyone except the person to whom the shares have been sold. [O.S. 1909, c. 47, s. 11.]

**612.** Where any such share is sold the sheriff shall, within ten days after the sale, serve upon the corporation at the same place as in the next preceding Rule mentioned a copy of the execution with his certificate endorsed thereon certifying the sale and the name of the purchaser, who shall have the same rights and be under the same obligations as if he had purchased the shares from the execution debtor at the time of the service of notice of the writ of execution. [Ib. s. 13.]

**613.** Nothing in these Rules shall affect any remedy which the execution creditor might, without these Rules, have had against any such shares or the dividends, premiums, bonuses or other pecuniary profits in respect thereof; and the provisions of the next preceding Rules shall apply to such remedy in so far as they can be applied thereto. [Ib. s. 14.]

Seizure of  
equitable  
interests in  
personal  
property

**614.** The sheriff may seize and sell any equitable or other right, property, interest or equity of redemption in or in respect of any goods or other personal property, including leasehold interests in land, of the execution debtor, and the sale shall convey whatever equitable or other right, property, interest or equity of redemption the execution debtor had or was entitled to in or in respect of the goods or other personal property at the time of the delivery of the execution to the sheriff for execution. [358; O.S. ib. s. 17.]

Seizure of  
money and  
securities for  
money

**615.** The sheriff may seize any money or bank notes, including any surplus of a former execution against the debtor, and any cheques, bills of exchange, promissory notes, bonds, mortgages or other securities for money belonging to the person against whom the execution has been issued and may hold such cheques, bills of exchange, promissory notes, bonds or other securities for money as security for the amount directed to be levied or so much thereof as has not been otherwise levied or raised; and the sheriff may sue in his own name for the recovery of the sums secured thereby and for the enforcement of the security. [359; O.S. ib. s. 18.]



**616.** The transference by the sheriff to the execution creditor or creditors of any security for money seized under the next preceding Rule shall discharge the sheriff to the extent of the amount due thereon and secured thereby. [361.]

Transference of securities by sheriff to execution creditor

**617.** A sheriff shall not be bound to sue any person liable upon such cheque, bill of exchange, promissory note, bond mortgage or other security, unless the party who sued out the execution furnishes sufficient security to indemnify the sheriff from all costs and expenses to be incurred in the prosecution of the action, or to which he may become liable in consequence thereof, and the expenses of the security not exceeding \$5 may be deducted from any money recovered in the action. [359, O.S. ib. s. 21.]

Sheriff, when bound to sue on security for money

**618.** A sheriff shall not, without written instructions and a sufficient bond of indemnity, be obliged to seize property which is in the possession of a third person claiming the same and not in the possession of the debtor against whose property the execution was issued.

Sheriff, when bound to seize property in possession of third party claimant

(2) The instructions shall specify the property in such a way as to enable the sheriff to identify it.

(3) The bond shall be assignable to the claimant and shall be conditioned that the persons executing the same shall be liable for the damages, costs and expenses which the sheriff or the claimant may be put to by the seizure and subsequent proceedings, including interpleader proceedings, if any, which he does not recover from other persons who ought to pay the same.

(4) If the sheriff is not satisfied with the bond offered the matter in difference shall be determined by a judge.

(5) The taking of a bond of indemnity under this Rule shall not affect the right of the sheriff to apply for relief by interpleader. [O.S. ib. s. 22.]

**619.** The sheriff may seize, under a writ of execution, any registered mortgage or encumbrance in favour of the execution debtor, whether upon lands or goods, by delivering a notice in writing of such seizure to the registrar or clerk, in whose office such mortgage or encumbrance is registered, but no such mortgage or encumbrance shall be affected or changed by any writ of execution until delivery of such notice. [360.]

Seizure of registered mortgage or encumbrance

**620.** The mortgagor or person liable to pay the moneys secured by a mortgage or encumbrance seized, as hereinbefore provided, shall after such seizure, pay to the sheriff all moneys then or thereafter payable, and any payment made to the execution debtor after notice or actual knowledge of such seizure shall be ineffective as against the sheriff and the execution creditor. [360.]

**621.** Where any goods or chattels are seized in execution, under a writ of execution, the sheriff shall, on request, deliver

Delivery of inventory to owner, etc.

to the owner, his agent or servant, an inventory thereof before they are removed from the premises on which they have been so seized. [O. 875.]

Sale of personal  
property after  
notice

**622.** Unless a judge otherwise orders, personal property seized under a writ of execution shall be sold by public auction after at least ten days' notice, but no mortgage or other security for money shall be sold except by leave of a judge, and then only under such conditions as to him shall seem meet.

(2) The notice of sale shall be posted in the sheriff's office and in at least five public places in the locality where the property is to be sold; provided that if the property consists of goods of a perishable nature or is of such a character as not to allow of a delay of ten days, the sale may be made on such notice as the nature of the case will permit. [357; O. 875.]

Return where  
goods remain  
in sheriff's  
hands unsold

**623.** The sheriff shall, where goods or lands seized by him under a writ of execution remain unsold in his hands for want of buyers, state in his return of "goods or lands on hand for want of buyers" the time and place, when and where such goods or lands were offered for sale by him and the names of at least three persons who were present at the time of such attempted sale, if so many were present, but if so many were not present then the names of those who were present, if any, and that there were no others; and if no person was present, then he shall state that fact. [O. 876.]

Lands not  
to be sold  
within a year

**624.** The sheriff shall not sell lands under a writ of execution within less than twelve months from the day on which the writ is delivered to him, unless a judge under special circumstances shall otherwise order. [364; O. 877 & 878.]

No sale of  
lands until  
return of  
*nulla bona*

**625.** Unless a judge otherwise orders, lands shall not be sold under any writ of execution by the sheriff until after he has made a return of *nulla bona* in whole or in part. [O. 879.]

Expenses  
of advertising  
lands

**626.** If the amount authorized to be made and levied under a writ of execution is made and levied thereunder out of goods and chattels, the persons issuing the writ shall not be entitled to the expenses of any advertising of lands thereunder. [368; O. 880.]

Advertisement  
of lands

**627.** No lands shall be sold under a writ of execution by the sheriff until he has given such notice by advertising and otherwise as a judge shall direct. [364; O. 882 & 1268.]

Adjournment  
of sale

**628.** Any sale by the sheriff of goods or lands may be adjourned as may be necessary. [365.]

Endorsements  
and return of  
certificates  
thereof

**629.** The sheriff to whom a writ of execution is directed shall endorse on such writ all necessary returns thereto in respect of his proceedings thereon as to goods and chattels, and shall return a certificate of such endorsements in lieu of the writ.



**630.** Upon a return by the sheriff of goods or lands on hand for want of buyers a writ of *venditioni exponas* may be issued for the sale of such goods, or lands, as the case may be, and the original writ of execution shall remain in force for the residue. [O. 884.]

Issue of writ of *venditioni exponas*

726/87

**631.** Any party entitled by the practice of the court to call for the return of a writ of execution may make a demand in writing upon the sheriff therefor, and the sheriff shall thereupon make a return to the writ within six days after the demand has been made. [E. 706; O. 885.]

Return of writ within six days after demand

726/7

**632.** The sheriff shall file the certificate of return in the office from which the writ issued and the officer with whom it is filed shall endorse thereon the day and hour of such filing. [O. 886.]

Filing of certificate of return

**633.** If the sheriff fails to make the return, a judge may make an order for the committal of the sheriff or such other order as may be just. [E. 706; O. 890 & 894.]

Failure to make return

731/2

DISCOVERY IN AID OF EXECUTION.

**634.** Where a judgment is for the recovery by or payment to any person of money or costs, the judgment creditor may without an order examine the judgment debtor upon oath before a clerk or deputy clerk, or by the order of a judge, before any other person to be named in such order, touching his estate and effects and as to the property and means he had when the debt or liability which was the subject of the cause or matter in which judgment has been obtained against him was incurred, or, in the case of a judgment for costs only, at the time of the commencement of the cause or matter, and as to the property and means he still has of discharging the said judgment, and as to the disposal he has made of any property since contracting such debt or incurring such liability, or, in case of a judgment for costs only, since the commencement of the cause or matter, and as to any and what debts are owing to him. [380; E. 610; O. 900.]

Examination of judgment debtors before a clerk, etc.

747

**635.** Where the judgment is against a corporation the judgment creditor may in like manner examine any of the officers of such corporation upon oath touching the names and residences of the members of the corporation, the amount and particulars of stock or shares held or owned by each member and the amount paid thereon, and as to what debts are owing to the said corporation, and as to the estate and effects of the corporation and as to the disposal made by it of any property since contracting the debt or liability in respect of which the said judgment was obtained or, in the case of a judgment for costs only, since the commencement of the cause or matter. [381; E. 610; O. 902.]

Examination of officers of corporations

748

**636.** Where judgment has been obtained as aforesaid a judge, on the application of the judgment creditor, may order

Examination of certain persons as to a debtor's means

749

any present or former clerk or employee of the judgment debtor, or any person, or the officer or officers of any corporation to whom the debtor has made a transfer of his property or effects, exigible under execution, since the date when the liability or debt which was the subject of the action in which judgment was obtained, was incurred or, where the judgment is for costs only, since the commencement of the cause or matter, to attend before some person to be named in the order and submit to be examined under oath as to the estate and effects of the debtor and as to the property and means he had when the debt or liability aforesaid was incurred, or, in the case of a judgment for costs only, at the date of the commencement of the cause or matter, and as to the property or means he still has of discharging the said judgment and as to the disposal he has made of any property since contracting such debt or incurring such liability and as to any and what debts are owing to him. The examination shall be for the purpose of discovery only and no order shall be made on the evidence given on such examination. [380, 381; E. 610; O. 903.]

Examination  
of persons  
in possession  
of property  
of judgment  
debtor

**637.** Where the judge is satisfied that there is reasonable ground for supposing that any person or corporation is in possession of any property of the judgment debtor exigible under execution he may order such person or any officer of the said corporation to attend and submit to examination *viva voce* upon oath before some person to be named in the order, touching the property and means of the judgment debtor. [O. 904.]

Compelling  
attendance

**638.** A person liable to be examined under any of the preceding Rules may be compelled to attend and testify and to produce books and documents in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined as in the case of a party or person subject to examination for discovery before judgment. [382; O. 905.]

Service of  
appointment  
and order

**639.** A person liable to be examined may be served with an appointment signed by the person before whom the examination is to be held and, where the examination is to take place under an order, also with a copy of the order; such service shall be made at least forty-eight hours before the time appointed for the examination. The person to be examined shall be paid the same fees as a witness and the examination shall be conducted in the same manner as an oral examination of an opposite party. [382; O. 906.]

Fees and  
conduct of  
examination

Committal of  
debtor for  
non-attendance,  
refusal to  
answer

**640.** Where the judgment debtor does not attend, does not allege a sufficient reason for not attending or, if attending, refuses to disclose his property or his transactions or does not make satisfactory answers respecting the same, the judge may order the debtor to be committed to gaol until he shall purge his contempt. [O. 907.]



**641.** Where an officer of a corporation does not attend and does not show a sufficient excuse for not attending, or, if attending, refuses to disclose any of the matters in respect of which he may be examined, the judge may order him to be committed to gaol until he shall purge his contempt. [O. 908.] Committal of officer of corporation 754

**642.** Where, under the preceding Rules, a person has been committed to gaol, a judge may, upon such notice as may be directed, discharge or modify the order committing him to gaol, but the order shall not relieve such person from any civil liability to any other person. [O. 909.] Relief of persons committed

**643.** Where a difficulty arises in or about the execution or enforcement of a judgment, the judgment creditor interested may apply to a judge who may make such other order thereon for the attendance and examination of any party or person as may seem just. [381; E. 611; O. 910.] Examination where difficulty arises 750

**644.** The costs of any examination in aid of execution, and of any attachment of debts, shall be in the discretion of a judge. [383; E. 612; O. 1139.] Costs

**645.** The filing with the sheriff of a certificate of the amount of any costs of or subsequent to judgment payable by the execution debtor to the execution creditor shall, upon a direction so to do being endorsed upon the original writ of execution, be a sufficient authority to the sheriff to levy such costs and interest thereon under the said writ. [E. 596.] Authority to levy costs

#### STOP ORDER.

**646.** Any person claiming to be interested in any money, stock or securities in court, or claiming to have the same applied towards the satisfaction of any judgment or execution against the person to whose credit such money, stock or securities stand, may, upon an affidavit verifying his claim, apply to a judge *ex parte* for an order directing that such money, stock or securities shall not be paid out or dealt with except upon notice to him. Stop orders 136

(2) The person obtaining any such order may be ordered to pay any costs, charges and expenses occasioned thereby to any person interested in the money, stock or securities to which such order relates. [O. 82.]

#### CHARGING ORDERS.

**647.** Where a solicitor has been employed to prosecute or defend any cause, matter or proceeding, the court in which the cause, matter or proceeding has been heard or is pending, or a judge thereof, may declare such a solicitor or his personal representative to be entitled to a charge upon the property of whatever nature, tenure or kind, recovered or preserved through the instrumentality of such solicitor, and upon such declaration being made, such solicitor or his personal representatives shall have a charge upon and against and a right to payment out of the property so recovered or preserved for the taxed costs, Order for charge in favour of solicitor on property recovered or preserved

charges and expenses of or in reference to such cause, matter or proceeding; and all conveyances and acts done to defeat or which may operate to defeat such charge or right shall, unless made to a *bona fide* purchaser for value without notice, be absolutely void and of no effect as against such charge or right.

(2) The court or judge may make such order for taxation of such costs, charges and expenses and for the raising and payment of the same out of the said property as may seem just; but no such order shall be made where the right to recover payment of such costs, charges and expenses is barred by any *Statute of Limitations*. [O. 1129.]

#### GARNISHEE PROCEEDINGS.

Garnishee  
summons on  
affidavit

**648.** Any plaintiff in an action for a debt or liquidated demand before or after judgment and any person who has obtained a judgment or order for the recovery or payment of money may issue a garnishee summons in the form or to the effect of form C in the schedule hereto. Such summons shall be issued upon the plaintiff or judgment creditor, his solicitor or agent, filing an affidavit:

(a) Showing the nature and amount of the claim or judgment against the defendant or judgment debtor and swearing positively to the indebtedness of the defendant or judgment debtor to the plaintiff or judgment creditor.

(b) Stating to the best of the deponent's information and belief that the proposed garnishee (naming him) is indebted to such defendant or judgment debtor and is within Alberta and giving the grounds of such information and belief.

(c) Stating in the case of the garnishee's having more than one office or place of business, the place at which or office through which such indebtedness is alleged to be payable.

(d) Stating further, where the alleged debt sought to be attached is for wages or salary, the residence of the defendant or judgment debtor and the nature of his occupation in the service of the garnishee at the time the alleged debt was incurred and whether or not the debt sued for or in respect of which the judgment was recovered, was contracted for board and lodging.

(e) If the deponent is unable to give all the particulars required by the two next preceding paragraphs, it will be sufficient if he give such particulars as are within his knowledge and state that after reasonable inquiry he has been unable to ascertain the other particulars.

(2) The clerk shall endorse on the summons the particulars required to be stated in the affidavit by clauses (c) and (d). [384; E. 622; O. 911.]

Provided that no garnishee summons shall issue until after judgment in any case where the defendant is a mechanic, workman, labourer, servant, clerk or employee engaged upon any railway in the Province of Alberta operated under the provisions of *The Railway Act, 1919*, being Chapter 68 of 9 and 10 George the Fifth, of the Statutes of the Dominion of Canada, or under

159  
1760



*The Railway Act*, being Chapter 48 of the Revised Statutes of Alberta, 1922, for the purpose of attaching any wages or salary due or accruing due in respect of such employment; and any summons issued in contravention hereof shall be utterly null and void.

**649.** Service of such summons on the garnishee shall bind the debt, if any, due or accruing due from the garnishee to the defendant or judgment debtor the particulars of which are given in the affidavit required by the next preceding Rule, or so much thereof as shall be necessary to satisfy the claim of the plaintiff or judgment creditor and the probable costs; such costs shall in cases of doubt be fixed by a judge upon application made to him thereafter.

Service of  
garnishee  
summons and  
effect thereof

762

(2) The garnishee summons may be served whether on the garnishee, defendant or judgment debtor, in any way that a statement of claim may be served; and the provisions relating to service of a statement of claim shall apply to service of a garnishee summons.

(3) A copy of the garnishee summons shall be served on the defendant or judgment debtor (or his solicitor) within twenty days after service on the garnishee or such further time as a judge *ex parte* may order.

(4) If the garnishee has more than one office and it appears from the affidavit filed that moneys alleged to be due to the defendant are or may be payable through some other office of the garnishee than that at which the garnishee summons is served, and a notice to that effect is served along with the garnishee summons, the person in charge of the office at which the garnishee summons and the notice are served shall forthwith notify the person in charge of the office at which, according to the notice, moneys alleged to be due to the defendant are or may be payable, and any such moneys shall be deemed to have been attached as and from the time the notice of the garnishee summons is actually received at the office through which such moneys are payable, or within forty-eight hours after the service of the garnishee summons, whichever shall be the shorter period. [385; E. 622, 623; O. 913.]

**650.** A debt shall be deemed to be due to the defendant or judgment debtor within the meaning of the next preceding Rule, though it has been assigned, charged or encumbered by the defendant or judgment debtor, if the assignment, charge or encumbrance is fraudulent as against the plaintiff or judgment creditor, as the case may be. [O. 912.]

Garnishee  
deemed  
indebted  
notwithstanding  
fraudulent  
assignment

**651.** No order shall be made against the garnishee or for payment out of any money paid into court by the garnishee until at least ten days after the service of the said summons on the defendant or judgment debtor and on the garnishee nor, when a garnishee summons issues prior to judgment, until the plaintiff shall have recovered a judgment against the defendant.

Order for  
payment out  
of money  
garnisheed

763 (3)

Application  
to set aside  
summons or  
for speedy  
determination

(2) The defendant or judgment debtor or the garnishee or any person claiming to be interested in the moneys attached, may apply to a judge to set aside the garnishee summons or for an order for the speedy determination of any question in the action or in the garnishee proceedings or for such other order as may be just.

(3) No money paid into court under these proceedings shall be paid out unless on the written consent of the parties interested, except by order of the court or judge, which order may be made *ex parte* or on such notice as the judge may direct. [386.]

Costs of  
garnishee  
paying money  
into court

769

**652.** A garnishee paying money into court shall be entitled to deduct therefrom his necessary disbursements and costs (not exceeding \$5) except when the debt due from him to the defendant or judgment debtor is larger than the amount of the plaintiff's claim and costs, in which case the garnishee may deduct such costs and disbursements out of the balance in his hands, but if such balance is not sufficient to cover such disbursements and costs he may deduct the deficiency from the amount to be paid into court. [387.]

Order for  
execution  
against  
garnishee

763 (1)

**653.** If the garnishee does not pay into court the amount due from him to the debtor or an amount sufficient to satisfy the claim or judgment and the probable amount of the costs of the plaintiff or judgment creditor and does not dispute the debt due or claimed to be due from him to such debtor, then the judge may, after judgment has been entered against the primary debtor or at once when the garnishee summons is founded on a judgment already recovered, order that judgment be entered up against the garnishee and that execution issue and it may issue accordingly to levy the amount due or so much thereof as may be sufficient to satisfy the judgment or order. [389; E. 624; O. 914.]

Issue where  
garnishee  
disputes  
liability

765  
768

**654.** If the garnishee disputes his liability or claims that the debt is or may be not attachable he shall enter with the clerk within the time specified in the summons or such further time as the judge may allow an answer by way of a statement showing the grounds on which he disputes liability or claims that the debt is or may be not attachable. After which, on application of the plaintiff or judgment creditor or any other person interested, on two days' notice given to the garnishee the judge may fix a time and place for summarily determining the question of liability or whether the debt is attachable, as the case may be; or may order that any issue or question necessary for determining such liability or whether the debt is attachable be tried and determined in any manner in which any issue or question in any action may be tried and determined and may direct who shall be the parties to such issue or question, and any determination under this section, whether summarily or otherwise, shall form a judgment of the court and may be enforced as such. [390; E. 625; O. 916.]



**655.** If within two months after the answer of the garnishee the plaintiff or judgment creditor does not proceed to have the question of liability determined as hereby provided, the garnishee may apply for an order to set aside the garnishee summons. [391.]

Default in proceeding after issue of garnishee

**656.** Whenever it is suggested by the garnishee or any person claiming to be interested that the debt attached belongs to some third person or that any third person is beneficially entitled to or interested in or has a lien or charge upon it, the judge may require such third person to be notified to appear and state the nature and particulars of his claim in respect of such debt. [392; E. 626; O. 920.]

Order for third person to appear

**657.** After hearing the allegations of any such third person or if he shall fail to appear in accordance with notice the judge may order execution to issue against the property of the garnishee to levy the amount due to the plaintiff or judgment creditor or any issue or question to be tried or determined in manner aforesaid and may bar the claim of such third person or make such other order as the judge shall think fit upon such terms, in all cases, with respect to the interest, lien or charge, if any, of such third person and with respect to costs, as the judge shall think just and reasonable. [393; E. 627; O. 920.]

Proceedings as to claims of third persons

**658.** Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him against the debtor to the amount paid or levied, although such proceeding may be set aside or the judgment or order reversed or the plaintiff fail in his action. [394; E. 628; O. 921.]

Garnishee discharged by payment

**659.** The garnishee shall not be liable for the costs of the proceedings unless and in so far only as occasioned by setting up an answer which he knew or ought to have known was untenable. [395.]

How far garnishee liable for costs

**660.** An execution shall not in any case issue to levy the money owing from any garnishee until and then so far only as such money shall become payable. [396; O. 915.]

Money not yet payable

**661.** Subject to the other provisions contained in this rule, no debt due or accruing due to a mechanic, workman, labourer, servant, clerk or employee for or in respect of his wages or salary shall be liable to attachment unless such debt exceeds the sum of \$75, and then only to the extent of the excess.

Debt due to mechanics, etc.

(2) Where the debt due or accruing due is wages or salary for a period of less than one month, the part thereof exempt from attachment shall be that sum which bears the same proportion to \$75 as the period for which the wages or salary is due or accruing due bears to one month of four weeks.

(3) Nothing in this Rule contained shall apply where the debt sued for, or in respect of which the judgment was recovered, has been contracted for board and lodging.

(4) If the said amount of \$75 or any portion thereof is paid into court, it shall not be necessary for the debtor to claim the same, but he shall be entitled to have it paid out to him at any time on application to the clerk of the court; but in the event of no such application being made until the expiration of two months after such payment in, or after judgment is recovered against the debtor, whichever is later, the judgment creditor shall be entitled, on application to the court or a judge, to have the said sum or so much thereof as may be sufficient to satisfy his judgment paid out to him.

(5) No wages, salary or other sums payable or agreed to be paid by his ordinary or former employer to any person in active military or naval service of the Crown, shall be liable to seizure or attachment; and if such moneys are paid into court the clerk shall pay them back to the person who paid them in, upon receiving a fiat of the judge.

#### RECEIVER.

**662.** Where an order is made directing a receiver to be appointed, unless otherwise ordered the person to be appointed shall first give security to be approved by a judge, duly to account for what he shall receive as such receiver and to pay the same as the court or judge shall direct and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. [412; E. 672.]

**663.** When a receiver is appointed with a direction that he shall pass accounts, the judge shall fix the days upon which he shall, annually or at longer or shorter periods, file and pass such accounts and also the days upon which he shall pay the balances appearing due on the accounts so filed or such part thereof as shall be certified as proper to be paid by him, and with respect to any receiver who shall neglect to file and pass his accounts and pay the balances thereof at the time so to be fixed for that purpose as aforesaid, the judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver and may also, if he shall think fit, charge him with interest upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver. [413; E. 674.]

**664.** In case of any receiver failing to file any account or affidavit or to pass such account or to make any payment or otherwise, the receiver or the parties, or any of them, may be required to attend before the judge to show cause why such account or affidavit has not been filed or such account passed or such payment made or any other proper proceeding taken, and thereupon such directions as shall be proper may be given by the judge, including the discharge of any receiver, and appointment of another and payment of costs. [414; E. 677.]

Security  
and salary  
of receiver

Accounts of  
receiver

Failure to  
file accounts,  
etc.



**665.** The accounts of liquidators and of guardians shall be passed and verified in the same manner as receivers' accounts. Accounts of liquidators and guardians  
[416; E. 679, 679a.]

ABSCONDING DEBTORS.

**666.** After the commencement of any suit wherein the claim is for recovery of a debt of \$100 or upwards from the defendant to the plaintiff, upon affidavit made by the plaintiff or one of several plaintiffs, if more than one, or by his or their agent, having a personal knowledge of the matter, stating clearly and succinctly from what cause such debts arose and the amount thereof and that he has good reason to believe (giving reasons therefor) that the defendant— Affidavit as to absconding debtor 812

(a) Is about to abscond or has absconded from Alberta, leaving personal property liable to seizure under execution of debt; or

(b) Has attempted to remove such personal property out of Alberta or to sell or dispose of the same with intent to defraud his creditors generally or the plaintiff in particular; or

(c) Keeps concealed to avoid service of process; and

(d) That the deponent verily believes that without the benefit of the attachment the plaintiff will lose his debt or sustain damage;

And upon the further affidavit of one other credible person that he is well acquainted with the defendant and has good reason to believe (giving such reasons) that the defendant is about to abscond or has absconded or has attempted to remove his personal property out of Alberta or to sell or dispose of the same or keeps concealed with intent as aforesaid, as the case may be, a judge being satisfied with the reasons aforesaid on application to him *ex parte* may direct the clerk to issue a writ of attachment in form D in the schedule hereto, which writ shall be executed by the sheriff according to its tenor: Attachment of property of absconding debtor

Provided that in any case where the debtor has absconded or is about to abscond from Alberta, leaving no wife or family behind, no property of such debtor shall be exempt from seizure. [417.]

**667.** A copy of every such writ shall be served on the debtor against whose effects the same is issued at the time of making any seizure thereunder, or as soon thereafter as such service can be effected, if the said debtor can be found; but if such personal service cannot be effected, a copy of the writ shall be left with some grown-up person resident at the place where such seizure is made, or, if no person is there resident, posted in a conspicuous place on the premises. [418.] Service of writ on debtor 835

**668.** Immediately after making a seizure under the said writ the sheriff shall make a return of the writ and with such return transmit annexed thereto an inventory of the property Return to writ and inventory

seized and the value thereof according to the best of his judgment and an affidavit of the manner in which service of such writ has been effected. [419.]

837/9.  
Return of  
property  
on giving  
security

**669.** Upon the seizure of any property under the writ hereinbefore described the person in whose possession such property was at the time of seizure may have the same returned to him upon giving the sheriff sufficient security for or paying into court an amount equal to its appraised value, as shown by the inventory prescribed by the preceding Rule. [420.]

Retention  
of property  
by sheriff

**670.** Unless the property seized is redelivered or relinquished by the sheriff under any of the provisions hereof he shall, unless otherwise ordered, hold the same until the plaintiff obtains judgment in the cause and an execution upon such judgment is delivered to the sheriff:

Provided that in case the plaintiff fails to recover judgment or is guilty of any unnecessary delay in the prosecution of his suit to judgment a judge may order the redelivery of the property so seized to the person from whose possession it was taken, unless some other writ of attachment or execution against the defendant shall be in the sheriff's hands for execution. [421.]

836  
Proceeding  
with action  
notwithstanding  
writ

**671.** Notwithstanding the issue of a writ of attachment, the cause shall be proceeded with in the ordinary way; but the plaintiff shall not have judgment against the defendant except by order of a judge and, in case the plaintiff fails to recover judgment for the full amount of the debt sworn to, he shall not be entitled to any costs, but may be ordered to pay the costs of the defendant. [422.]

840  
Setting aside  
writ of  
attachment

**672.** A writ of attachment may be set aside by a judge on satisfactory proof by affidavit that the creditor who sued out such writ had not reasonable cause for taking such proceeding. [423.]

828  
Sale of horses,  
etc., or  
perishable  
goods

**673.** In case any horses, cattle, sheep or any perishable goods or chattels or such as from their nature cannot be safely kept or conveniently taken care of are taken under any writ of attachment, the officer who seized the same shall have them appraised and valued on oath by two competent persons, and in case the plaintiff desires it and deposits with the sheriff a bond to the defendant executed by one or more persons whose sufficiency shall be approved of by such officer in double the amount of the appraised value of such articles, conditioned for the payment of such appraised value to the defendant, together with all costs and damages incurred by the seizure and sale thereof in case judgment is not obtained by the plaintiff against the defendant, then the sheriff may sell all or any of such enumerated articles at public auction to the highest bidder, giving not less than six days' notice of such sale unless any of the articles are of such a nature as not to allow of that delay, in which case the officer shall sell such articles last mentioned



forthwith and shall hold the proceeds of such sale for the same purpose as he would have held any property seized under the attachment. [424.]

**674.** If the plaintiff after notice to himself or his solicitor of the seizure of any articles enumerated in the preceding Rule neglects or refuses to deposit the bond or only offers a bond with sureties insufficient in the judgment of the sheriff, then after the lapse of four days next after the notice the sheriff shall be relieved from all liability to the plaintiff in respect to the articles so seized and the sheriff shall forthwith restore the same to the person from whose possession he took such articles. [425.]

Failure to  
deposit bond

829

SATISFACTION OF JUDGMENT.

**675.** A memorandum of satisfaction of judgment shall be entered by the clerk in the procedure book on a consent to the satisfaction signed by the person entitled to the benefit of the judgment or his solicitor on the record, verified by affidavit, or on the order of the judge.

Memorandum  
of satisfaction  
of judgment

669  
670

(2) The order shall be obtained on notice and upon such proof of satisfaction as the judge may require.

PAYMENT OF MONEY INTO AND OUT OF COURT.

**676.** All moneys to be paid into court shall be paid into such incorporated bank or banks as may be designated for that purpose for each judicial district from time to time by order of the Lieutenant Governor in Council, after a written direction has been first obtained from the clerk of the court to the bank to receive the money, and in no other manner.

Payment  
into specified  
banks

133

**677.** Any person desiring to pay money into court shall file with the clerk a *praecipe* and obtain from him a direction to the bank to receive the money.

Payment into  
court, how  
made

134

**678.** Any person paying money into court shall be entitled to credit therefor as of the date on which the same was deposited in the bank.

**679.** The bank on receiving the money, shall give a receipt therefor in duplicate one of which shall be delivered to the person making the deposit, and the other posted or delivered the same day to the clerk of the court by whom the direction was given.

Receipt by  
bank

135

**680.** The money shall be paid into court into a suitor's account to the credit of the cause or matter in which the payment is made and money paid in shall, unless otherwise authorized, only be paid out under an order of the court or a judge.

135

**681.** The suitors' account shall be in charge of the clerk of the court into which the money is paid.

Suitors'  
account

132

147  
Payment  
out of court,  
how made

**682.** In the suitors' account there shall be entered every sum of money paid into court, by whom and under what authority; and also every sum paid out, to whom and under what authority.

136  
**683.** Money shall be paid out of court only upon the cheque of the clerk of the court countersigned by a judge or master in chambers. [144.]

137  
**684.** No order shall be made for payment out, or cheque countersigned, when no order is necessary, without the production of a certificate of the clerk that the moneys are in court.

138  
**685.** Except under special circumstances no money shall be paid out of court to any person other than the person entitled thereto, except on the latter's written authority.

147  
Interest  
upon moneys  
in court

**686.** Simple interest shall be allowed upon moneys paid into court at the rate of 3 per cent. per annum:

Provided that no interest shall be allowed on any sum less than \$500. unless the same has remained in court at least one month.

Suspense  
account

**687.** Wherever the balance remaining to the credit of any action or matter to which an adult party is entitled does not exceed \$25, and two years have elapsed without the balance being claimed, the account in such action or matter shall be closed by the transfer of the balance to the "suspense account," but such transfer shall not prejudice the claim of any suitor entitled to the balance to its payment.

(2) All balances, which are or shall hereafter be standing to the credit of any action or matter which have not been or which hereafter shall not be claimed before the lapse of ten years from the time when application might have been made for the payment out thereof to the person entitled thereto, shall be transferred to the suspense account; but such transfer shall not prejudice the claim of any person to the payment of any moneys so transferred. Moneys standing to the credit of the suspense account shall be subject to the control and direction of the Lieutenant Governor in Council. [O. 58.]

Moneys  
recovered on  
behalf of  
infant, etc.

**688.** Moneys recovered on behalf of an infant or person of unsound mind may be ordered to be paid into court and any sum so paid into court and any interest thereon shall be subject to such orders as may from time to time be made concerning the same and may either be invested or be paid out of court or transferred to such persons to be held and applied upon and for such purposes and in such manner as the court or a judge shall direct. [140; E. 269.]

Investment  
of moneys  
in court

**689.** All moneys under the control and subject to the order of the court may be invested in the public funds of the Dominion or of the province, or in such other class of securities as the judges of the court may from time to time authorize. [143; E. 271.]



**690.** When the estate of a deceased person, who has died Payment out of small intestate estates intestate, is entitled to a fund or to a share of a fund in court not exceeding \$500, and it is proved to the satisfaction of a judge that no administration has been taken out and that the assets of the estate do not exceed \$500, including the amount in court to which such estate is entitled, the judge may direct that the amount shall be paid or transferred to the person or persons beneficially entitled thereto. [E. 272a.]

SALES OF REAL ESTATE.

**691.** If in any cause or matter relating to any real estate Power of court to order sale of real estate it shall appear necessary or expedient that the real estate, or any part thereof should be sold, the court or a judge may order the same to be sold and any party bound by the order and in possession of the estate or in receipt of the rents and profits thereof shall be compelled to deliver up such possession or receipts to the purchaser or such other person as may be thereby directed. [449; E. 680.]

**692.** In all cases where a sale, mortgage, partition or exchange is ordered the court or a judge shall have power, in addition to the powers already existing, with a view to avoiding expense or delay or for other good reason, to authorize the same to be carried out: Mode of carrying out sale, mortgage, partition or exchange ordered by court

(1) By laying proposals before a judge for his sanction; or

(2) By proceedings altogether out of court, any moneys produced thereby being paid into court or to trustees or otherwise dealt with, as the judge may order; provided always that the judge shall not authorize the said proceedings altogether out of court unless and until he is satisfied by such evidence as he shall deem sufficient that all persons interested in the estate to be sold, mortgaged, partitioned or exchanged, are before the court or are bound by the order for sale, mortgage, partition or exchange. [450; E. 680a.]

**693.** Where a judgment or order is given or made directing Sale with approbation of judge any property to be sold, unless otherwise ordered, the same shall be sold with the approbation of a judge to the best purchaser that can be got for the same, to be allowed by the judge, and all proper parties shall join in the sale and conveyance, as the judge shall direct. [451; E. 682.]

**694.** Whenever a judgment or order is given or made for Conduct of sale of property vested in executor, etc., or trustee the administration of the estate of a deceased person or execution of the trusts of a written instrument and a sale is ordered of any property vested in any executor, administrator or trustee, the conduct of such sale shall be given to such executor, administrator or trustee unless the judge shall otherwise direct. [489; E. 666.]

MISCELLANEOUS.

**695.** Where a judgment or order is given or made directing Claimants not coming in to prove, etc., excluded an account of debts, claims or liabilities or an inquiry for heirs, next-of-kin or other unascertained persons, unless otherwise

ordered, all persons who do not come in and prove their claims within the time which may be fixed for that purpose by a judge, shall be excluded from the benefit of the judgment or order. [491; E. 806.]

## Advertisements

**696.** The judge may direct that notice of the time so fixed by him be given by publication in a newspaper or newspapers to be specified by him and unless otherwise directed no other notice shall be required. [492; E. 807.]

Discharge, etc.,  
of order by  
consent

**697.** On consent of all parties interested a judge may set aside, vary or discharge any order made by him. [497.]

## LUNACY.

Proceedings  
in lunacy  
to be by  
petition

**698.** Proceedings in lunacy shall be by petition for that purpose, verified on oath, setting forth the grounds on which the application is made and the relation of the petitioner to or with the alleged lunatic and his property and estate and also a description and value of the same, separating real and personal estate. The petition shall be heard by a judge. [551.]

Conduct of  
lunacy  
proceedings

**699.** Upon presentation of such petition the judge shall appoint a time and place for the hearing of the same, at which time and place (all necessary parties having been duly notified) the judge shall inquire into the facts and hear such evidence under oath as may be adduced and shall thereupon determine whether or not the person who is the subject of the inquiry is at the time of such inquiry of unsound mind, has property and is incapable of managing such property. [552.]

**700.** A copy of such petition and notice of the intended application shall be served on the alleged lunatic, unless such service be dispensed with by the judge. [553.]

**701.** The judge may make an order, as in an action, to take evidence to be used on any such hearing, and all depositions taken thereunder shall be received in evidence at the hearing, saving all just exceptions. [554.]

Appointment  
of guardian  
of lunatic

**702.** In case the judge shall determine such person to be a lunatic and that he has property, the judge shall forthwith order the appointment of one or more persons as guardian or guardians to his estate. [555.]

Examination  
of lunatic

**703.** On every such inquiry the alleged lunatic, if he be within the jurisdiction, shall be produced and examined by the judge, if the judge so directs. [556.]

## Costs

**704.** The judge may order the costs, charges and expenses of and incidental to proceedings in matters of lunacy to be paid either by the party presenting the petition or the party opposing the same (if opposition is made) or out of the estate or partly one way and partly the other. [557.]



**705.** In every case, unless otherwise specially provided by order of the judge, the following provisions shall be complied with: Security and duties of guardian of estate of lunatic

(1) The guardian of the estate, except in the case of the appointment of the public administrator and official guardian, shall, before receiving his appointment, furnish security to be approved by the judge in double the approximate value of the personal estate and of the annual value of the real estate for duly accounting for the same once in each year or oftener, if required by the judge or court, such security to be by bond to the clerk of the court and his successors in office or legal assigns, which bond shall be filed in court.

(2) The guardian of the estate shall, within six months after appointment, file in court a true inventory of the whole real and personal property and estate of the lunatic, stating the income and profits thereof and setting forth the debts, credits and effects of the lunatic, so far as the same have come to the knowledge of the guardian.

(3) If any property belonging to the estate be discovered after the filing of the inventory the guardian shall file a true account of same from time to time, as the same is discovered, and shall give such further security, if any, as may be ordered.

(4) Every inventory shall be verified by the oath of the guardian. [558.]

**706.** Whenever the personal estate of a lunatic is not sufficient for the discharge of his debts: Procedure where estate insufficient

(1) The guardian of his estate may apply by petition to the judge for authority to mortgage or sell so much of the real estate as may be necessary for the payment of such debts.

(2) Such petition shall set forth the particulars and amount of such estate (real and personal) of the lunatic, the application made of any personal estate and an account of the debts and demands against the estate.

(3) The judge may take or cause to be made inquiries into the truth of the representations made in the petition and hear all parties interested in the real estate.

(4) If the judge is satisfied as the result of such inquiries that the personal estate is not sufficient for the payment of the debts and that the same has been applied to that purpose as far as the circumstances of the case render proper the judge may order the real estate or a sufficient portion of it to be mortgaged or sold by the guardian and the moneys thus raised shall be employed for the payment of the debts of the estate and if insufficient shall be distributed in the same way as intestates' estates are distributed by law, the guardian having first provided a bond similar in terms to that provided by paragraph (1) of the next preceding Rule for duly accounting for the proceeds so raised. [559.]

**707.** When the personal estate and the rents, profits and income of the real estate of the lunatic are insufficient for his maintenance and that of his family and for the proper education

of his children, or when for any other cause, it shall appear desirable so to do, on application made by the guardian or any member of the family of the lunatic, the judge may, after inquiry as hereinbefore provided in the case of debts, order the mortgaging or sale of the whole or part of the real estate of the lunatic by the guardian, the guardian having first provided a bond as required by the preceding Rule. [560.]

Remuneration  
of guardian

**708.** The judge may order such remuneration to the guardian of a lunatic as he may consider reasonable to be paid and raised from the lands, rents or personal property of such lunatic. [561.]

Removal  
of guardian

**709.** On sufficient grounds shown the judge may remove a guardian and appoint another in his stead. [562.]

Title in lunacy  
proceedings

**710.** In lunacy proceedings the petitions and papers may be intituled as follows:

"In the Supreme Court,

Judicial district of..... In the matter  
of....., an alleged lunatic." [563.]

#### ACTIONS AGAINST PUBLIC OFFICERS.

Actions  
against public  
officer

**711.** All actions and prosecutions to be commenced against any person for anything purporting to be done in pursuance of his duty as a public officer (unless otherwise ordered by a judge) shall be commenced and tried in the district wherein the act was committed and must be commenced within six months after the act was committed and not otherwise. [536.]

Inconsistent  
rules of  
practice  
superseded

**712.** All rules of practice heretofore in force inconsistent with these Rules are hereby superseded. [O. 2.]

Power of  
judges to  
make and  
alter rules

**713.** The judges of the Supreme Court are hereby authorized to alter and amend any Rules of Court or tariffs of costs or fees for the time being in force, or make additional Rules or tariffs.

#### FORM A.

##### Rule 35.

#### NOTICE TO A THIRD PARTY.

To.....(*the person upon whom service is to be made*). Take notice, first, that from the time of service of this notice, you [*naming the party (where the notice is directed to be served on some person for an infant or person of unsound mind)* X. Y. (*naming the infant or person of unsound mind*) an infant or a person of unsound mind] will be bound by the proceedings in this cause in the same manner as if you (*or, the said infant or person of unsound mind*) had been originally made a party unless you (*or the said infant or person of unsound mind*) within fourteen days after the service hereof apply to the court to discharge, vary, or add to the within judgment (*or order*). And secondly that you (*or, the said infant or person of unsound mind*) may upon service upon the plaintiff of a notice of your desire so to do, attend the proceedings under the within judgment, or order.

A.B. of the.....of.....In the  
.....of.....

*Solicitor for the plaintiff.*



FORM B.

Rule 61.

FORM TO BE ENDORSED ON COPY OF ORDER TO CARRY ON  
PROCEEDINGS.

Take notice that if you desire to discharge this order you must apply to the court for that purpose within twelve days after the service hereof upon you (*or as the case may be*, within twelve days of the appointment for you of a guardian *ad litem*.) The statement of claim in this action is filed in the office of the.....at.....

.....  
*Solicitor for the plaintiff.*

(*To the parties to be served with the order.*)

FORM C.

Rule 648.

GARNISHEE SUMMONS.

In the Supreme Court of Alberta,  
Judicial District of.....

BETWEEN:—

.....of.....  
*Plaintiff*

and

.....of.....  
*Defendant*

and

.....of.....  
*Garnishee*

To the above named Garnishee:

You are hereby notified that an action has been commenced in this court by the issue of a statement of claim in which the plaintiff claims of the defendant the sum of.....as shown by his statement of claim filed in court, a copy of which is hereto annexed (*or*, You are hereby notified that the plaintiff has recovered a judgment in this court against the defendant for.....) and it is alleged on affidavit filed that you are indebted to the said defendant (*or judgment debtor*).

And you are hereby required within ten days from the service hereof upon you to pay the amount of your said indebtedness to the said .....into court or so much thereof as shall be necessary to satisfy the claim of the said.....and his probable costs. If you dispute your liability or claim that the said debt is or may be not attachable you must within ten days from the service hereof upon you enter with the clerk an answer hereto by way of statement showing the grounds on which you dispute liability or claim that the debt is or may be not attachable.

Issued at.....this.....day of  
.....A.D. 19.....

.....  
*Clerk of the Court, or  
Process Issuer.*

## RULES OF COURT

## FORM D.

*Rule 666.*

## WRIT OF ATTACHMENT.

In the Supreme Court of Alberta,  
Judicial District of.....

BETWEEN:

.....of.....  
*Plaintiff*  
and  
.....of.....  
*Defendant*

GEORGE the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, KING, Defender of the Faith, Emperor of India, to the Sheriff of the Judicial District of.....

You are commanded to attach, seize and safely keep all the personal estate, credits and effects together with all evidences of title, debts, books and book accounts or other documents, vouchers or papers belonging thereto or otherwise of the above named defendant to secure and satisfy the plaintiff the sum of.....with his costs of action and to satisfy the debt and demand of such other creditors of the said defendant as shall prosecute their claims to judgment and lodge executions with you the said sheriff within the time allowed by *The Creditors' Relief Act* to entitle them to share in the distribution of the proceeds.

And you are further commanded that so soon as you shall have executed this writ you do return the same with an affidavit of service and a certificate of your action thereunder.

Issued at.....this.....day of  
.....A.D. 19.....

.....  
*Clerk of the Court, or*  
*Process Issuer.*



FORM E.

Rule 603a.

WRIT OF EXECUTION

Canada } In the.....court of.....  
Province of Alberta }

BETWEEN:

....., *Plaintiff*,

and

....., *Defendant*.

GEORGE the Fifth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, KING, Defender of the Faith, Emperor of India, to the Sheriff of the Judicial District of.....

GREETING;

WE COMMAND YOU that of the goods or lands of.....  
.....in the Judicial District of.....  
you cause to be made.....dollars and.....  
cents, which the.....lately by a judgment of this  
court in this action dated the.....day of.....  
19....., recovered against him and also the further sum of.....  
.....dollars and.....cents for the costs, taxed to  
the.....in respect of the said judgment together  
with interest at the legal rate on both of the said sums from the date  
of the said judgment, and also the amount of any costs subsequent to  
the said judgment, certified to be payable by the execution debtor to the  
execution creditor, and in respect whereof this writ shall be endorsed  
with a direction to levy the same pursuant to Rule 645 of the Consoli-  
dated Rules of the Supreme Court, together with interest thereon at  
the rate of aforesaid from the date of such certificate;

AND THAT YOU HAVE the said money before and make appear in  
what manner you shall have executed this writ to the said court at  
.....immediately after the execution thereof to-  
gether with this writ.

Issued at the.....of....., in the  
Province of Alberta this.....day of.....

A.D. 19.....

.....  
*Clerk of the Court.*

(To be indorsed on back)

**Mr. Sheriff:**

Levy the sum of.....  
 \$.....being the debt or dam-  
 ages, and the sum of.....  
 \$.....being the taxed costs and  
 interest at 5% per annum on both  
 sums from the.....,  
 19....., and the sum of.....  
 \$.....for this writ.

And in the event only of the moneys  
 being made of the lands of the execu-  
 tion debtor for the additional costs  
 thereof, the further sum of.....  
 \$.....together with your own  
 fees, poundage and other incidental  
 expenses.....\$.....

AND levy in addition the amount of  
 costs subsequent to judgment certified  
 to be payable by the execution debtor  
 to the execution creditor.....  
 \$.....

(Enter other charges here)

To the best of the knowledge, infor-  
 mation and belief of the execution  
 creditor, the name in full of the execu-  
 tion debtor is.....  
 his occupation is.....  
 and.....and  
 his residence is.....

TO THE REGISTRAR OF THE  
 LAND TITLES OFFICE FOR THE  
 .....  
 ALBERTA LAND REGISTRATION  
 DISTRICT:

I certify that the within is a true  
 copy of writ of execution against land  
 together with all endorsements there-  
 on, now in my hands to be executed,  
 and which was issued out of the.....  
 .....Court of the  
 .....Judicial District  
 of.....and  
 delivered by me at.....  
 o'clock.....m. on the  
 .....day of.....  
 A.D. 19.....

Dated at.....  
 this.....day  
 of....., 19.....  
 .....  
 Sheriff for the Judicial District of  
 .....

Office No.....  
 IN THE.....COURT  
 OF.....

COURT NO.....

BETWEEN:

.....Plaintiff,

and

.....Defendant.

To the Registrar of the Land  
 Titles Office for the.....  
 Alberta Land Registration  
 District.

#### WRIT OF EXECUTION

This writ is issued by  
 .....  
 in the.....of  
 .....  
 in the Province of Alberta.  
 Solicitor:



FORM F.

Rule 135a.

In the.....Court of the Judicial District of.....

Between.....Plaintiff

and

.....Defendant

I, .....of....., in the Province of Alberta,  
make oath and say:

1. That I did on the.....day of....., 192.....,  
serve the defendant with a true copy of the.....  
hereunto annexed, by inserting such copy in an envelope addressed to  
the defendant at.....and posting the same by registered  
mail in the Post Office at.....

And hereunto annexed, marked Exhibit A, is the receipt from the  
Postmaster at.....for such registered letter; and hereunto  
annexed marked Exhibit B is the receipt of the defendant for such  
registered letter.

2. The defendant resides more than ten (10) miles from the.....  
of....., which is the nearest city, town or incor-  
porated village in the Province of Alberta to his residence.

Sworn before me at..... }  
in the Province of Alberta, this.... }  
day of....., 192..... }

.....  
*A Commissioner, Notary Public, or Justice of the Peace.*

RULES AS TO COSTS.

COSTS OF COURT OFFICERS.

**714.** There shall be paid to each registrar, clerk and sheriff **1**  
the fees and allowances authorized by the tariff of fees in  
schedule E to these Rules. Fees payable  
to registrar,  
etc.

(2) For any necessary services performed for which no fees  
are prescribed a judge may make such allowance as he deems  
reasonable. [524; O. 1189.] Where no fees  
prescribed

**715.** All fees and allowances respectively payable under the **2**  
said tariffs, whether under writs of execution or otherwise, shall  
be payable in advance by the party at whose instance the service  
is to be rendered; but in cases where the amounts are impossible  
of ascertainment for any reason, then the amount estimated  
by the officer or fixed by the judge shall be deposited or paid,  
to be accounted for when the correct amount is ascertained.  
[532.] Fees payable  
in advance

SHERIFF'S FEES.

**716.** In case a part only is levied by the sheriff on or by **3**  
force of any execution the sheriff shall be entitled, besides his  
fees and expenses of execution, to poundage only upon the  
amount so made by him whatever be the sum endorsed upon  
Sheriff's fees,  
where part  
only levied

the writ and in case the personal estate, except chattels real, of the debtor is seized on or under an execution but not sold by reason of satisfaction having been otherwise obtained or from some other cause and no money is actually made by the sheriff on or by force of such execution the sheriff shall be entitled to the fees and expenses of execution and poundage only on the value of the property seized not exceeding the amount endorsed on the writ or such less sum as a judge of the court out of which the writ issued may deem reasonable under the circumstances of the case.

Where land,  
etc., advertised  
but not sold

(2) Where land or chattels real of the judgment debtor have been advertised under an execution but not sold by reason of payment or satisfaction having been otherwise obtained on, or within one month before, the day on which the property has been advertised to be sold, or any day to which the sale may be adjourned, the sheriff shall be entitled to the fees and expenses of the execution, and poundage only on the value of the debtor's interest in the property not exceeding the amount endorsed on the writ, or such less sum as a judge may deem reasonable.

(3) Any party interested may apply to the judge to fix such sum either before or after taxation of the sheriff's bill of costs, charges and expenses or on review or appeal from such taxation. [374; O. 1190.]

**4**  
Sheriff entitled  
to fees only  
for services  
actually  
rendered

**717.** In the case of writs of execution upon the same judgment to several judicial districts under one of which the personal estate of the judgment debtor or debtors has been seized or advertised but not sold by reason of satisfaction having been obtained under or by virtue of the writ in some other judicial district and no money has been actually made on such execution the sheriff shall be entitled to mileage and fees only for the services actually rendered and performed by him. [375; O. 1191.]

**5**  
Detailed bill  
for fees, etc.,  
not taxed

**718.** Upon the settlement of an execution either in whole or in part by payment, levy or otherwise, or upon the withdrawal, stay or setting aside of an execution, the sheriff or officer claiming any fees, poundage, incidental expenses or remuneration which have not been taxed shall, within forty-eight hours after being required by any party interested, deliver a copy of his bill in detail to the applicant.

(2) Such bill shall be taxed by the taxing officer upon the applicant obtaining and serving an appointment for such taxation. [376; O. 1193 & 1194.]

**6**  
Only fees, etc.,  
taxed to be  
allowed

**719.** No sheriff shall without taxation collect any fees, costs, poundage or incidental expenses after having been required to have the same taxed; and upon tender of the amount taxed no fees, costs, poundage or incidental expenses in respect of proceedings subsequently taken shall be allowed to any sheriff. [377; O. 1195.]



**720.** It shall be the duty of the taxing officer to grant an appointment for the taxation of and to tax the bills of costs presented to him for taxation upon payment or tender of his fees and to give when requested a certificate of such taxation and the amount thereof. [378; O. 1194 & 1196.] **7**  
Appointment  
for taxation  
of bill of costs

**721.** Any party dissatisfied with the taxation may appeal to a judge for a revision of such taxation. [379; O. 1197.] **8**  
Appeal from  
taxation

SECURITY FOR COSTS.

**722.** Security for costs may be ordered:

**9**  
Security for  
costs, when  
ordered

(a) Where the plaintiff resides out of Alberta;

(b) Where the plaintiff is ordinarily resident out of Alberta though he may be temporarily resident within Alberta;

(c) Where the plaintiff has brought another action or proceeding for the same cause, which is pending in Alberta or in any other jurisdiction;

(d) Where the plaintiff or any person through or under whom he claims has had judgment or order given against him in another action or proceeding for the same cause in Alberta or in any other jurisdiction with costs, and such costs have not been paid;

(e) Where the plaintiff sues as an informer or seeks to recover any penalty given to an informer or person who sues for the same under a statute or law by which a penalty is given to any person who sues for the same, either for his sole benefit, for the benefit of the Crown or partly for his benefit and partly for the benefit of the Crown, and the defendant swears that in his belief the plaintiff or informer is not possessed of property within the jurisdiction sufficient to answer the costs of the action in case a judgment is rendered in favour of the defendant, and that he, the applicant, has a good defence to the action upon the merits, as he is advised and believes;

(f) Where the action is brought by a nominal plaintiff;

(g) Where upon the examination of the plaintiff it appears that there is good reason to believe that the action is frivolous and vexatious and that the plaintiff is not possessed of sufficient property to answer the costs of the action;

(h) Where an action is brought on behalf of a class and the plaintiff is not possessed of sufficient property within the jurisdiction to answer the costs of the action and it appears that the plaintiff is put forward or instigated to sue by others;

(i) Where under the provisions of any statute the defendant is entitled to security for costs.

(2) Where either party to a garnishee, interpleader or other issue is an active claimant, he shall be deemed to be a plaintiff for the purposes of this Rule. [520; E. 981a; O. 1198.] Party to  
garnishee, etc.,  
deemed a  
plaintiff

**723.** The application for security may be made at any time after the service of the statement of claim and shall be supported by an affidavit of the defendant or his agent, who can **10**  
Application  
to be supported  
by affidavit

speak positively as to the facts, alleging that there is a good defence to the action on the merits and specifying the nature thereof.

**11**  
Order may be  
refused

**724.** If it be made to appear upon the application that the plaintiff is possessed of sufficient property within the jurisdiction that will be available for the defendant's costs, the order may be refused.

**12**  
Requirements  
of order

990 in 11

**725.** The order shall require the plaintiff to furnish such security as the judge may direct within two months or such other time as may be specified in the order and that, until such security is given, all further proceedings in the action be stayed and that in default of such security being given the action be dismissed without further order, unless a judge on special application shall otherwise direct. [520, 521; E. 981; O. 1201, 1202, 1203, 1204.]

**13**  
Security by  
bond

**726.** Where the security is given by bond, it shall unless the judge otherwise directs be given to the party or person requiring the security. [522; E. 982; O. 1205.]

**14**  
Amount  
increased or  
diminished

994

**727.** The amount of security may be increased or diminished from time to time. [O. 1208.]

**15**  
Payment out  
without order

**728.** Where money has been paid into court as security for costs, it may be paid out and a bond filed for security for costs may be handed out for suit or cancellation, without order upon the written consent of the solicitors. [O. 1210, 1211.]

#### COSTS AS BETWEEN PARTIES.

*[Nothing contained in the following Rules as to costs shall apply to matters governed by the Small Debt Procedure.]*

**16**  
What "costs"  
shall include

**729.** "Costs" shall include all the expenses which any party has reasonably and properly paid or become liable to pay for the purpose of carrying on or appearing as party to any proceeding, including the charges of barristers and solicitors for all services reasonably and properly performed, of accountants, engineers, or other experts for attendance to give evidence, of legal agents for services performed in connection with the proceedings, and any expenses for the preparation of plans, models, copies or documents, for the fees payable to officers of the court, and for obtaining the attendance of witnesses at the trial, or upon any examination on any affidavit or for the purpose of the trial.

What "costs"  
may by order  
include

(2) If so directed by the court or a judge "costs" shall also include the reasonable charges of accountants, engineers or other experts for investigations and inquiries made for the purpose of giving evidence or assisting in the conduct of the proceeding.

**17**  
Costs, and  
how payable,  
etc., in  
discretion of  
court or judge

**730.** Notwithstanding anything contained in Rules 18 to 33, inclusive, the costs of all parties to any proceeding, including third parties, the amount thereof, the party by whom or the fund or estate or portion of an estate (if any) out of which they

934



are to be paid, shall be in the discretion of the court or judge thereof, and the court or judge may in any case award a gross sum in lieu of or in addition to any taxed costs, and may allow costs to be taxed to one or more parties on one scale and to another or other parties on the same or another scale, and the amounts taxed on the excess of one scale over another to be set off one against another, and in case no order is made the costs shall follow the event. [517, 518; E. 976, 977; O. 1130.]

752 imp. **731.** In any proper case any barrister and solicitor who has acted for any of the parties to any proceeding, may be ordered to pay any of the costs thereof. [525; E. 980, 986.]

**18**  
Barrister and  
solicitor may  
be ordered to  
pay costs

**732.** Where the court or a judge appoints a solicitor to be guardian *ad litem* of an infant or person of unsound mind, the court or judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid by the parties or some one or more of the parties to the cause or matter in which such appointment is made or out of any fund in court in which such infant or person of unsound mind may be interested and may give directions for the repayment or allowance of costs as the justice and circumstances of the case may require. [519; E. 988; O. 1138.]

**19**  
Costs of infant  
or person of  
unsound mind

959 **733.** A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is allowed. [E. 989; O. 1165.]

**20**  
Set-off may  
be allowed

**734.** The charges of barristers and solicitors in the District Court and in the Supreme Court shall be in the discretion of the taxing officer, but shall not exceed the amounts as set forth in the first and second columns of schedule C hereto, increased by 15%, according to the amount involved and irrespective of the court in which the proceedings were taken:

**21**  
Charges  
fixed by  
schedule C

Provided that the Supreme or District Court or a judge thereof may in any case allow such increased charges as the special skill shown or labour done, or the importance or urgency of the matter in controversy directly or indirectly justifies, and the clerk may, unless otherwise ordered by the court or a judge, in any defended case where the amount involved is as set out in the third, fourth and fifth columns of the said schedule, allow increased charges not exceeding those set out in the said columns., **increased by 15 per cent.**

Court may  
allow increased  
charges

Clerk may  
allow increased  
charges as  
fixed

(2) The clerk may in any contested case allow fees exceeding the sums mentioned in the fifth column of the said schedule by one-third where the amount involved is \$15,000 or more, by one-half where the amount involved is \$25,000 or more, and by as much again where the amount involved is \$50,000 or more.

How clerk  
may allow  
fees exceeding  
sums in  
schedule

(3) Each item in the said schedule shall be deemed to include all instructions, documents, attendances, letters, taxation of costs and other services necessary or convenient to be taken, prepared, made, written, read, performed, or had, for the pur-

What items  
in schedule  
to include

pose of fully completing the step in the cause referred to or implied in such item; provided that if any such step has been begun but only partially completed a proper proportionate part of the charge may be allowed.

Services not  
provided for  
in schedule

(4) In case services have been performed by a barrister and solicitor in any proceedings which are not provided for in the said schedule, either expressly or by implication, such allowance may be made as a judge may see fit.

## 22

Scale and  
limitation of  
costs, how  
determined

**735.** Where by any judgment or order costs are directed to be paid by any party the scale and limitation of costs shall, if no other relief than the payment of a sum of money has been claimed or obtained, be determined as against a plaintiff by the amount claimed, or as against a defendant by the amount for which judgment is given.

## 23

Costs, how  
taxed where  
relief other  
than or  
in addition to  
payment of  
money is  
recovered or  
claimed

**736.** Where by any judgment or order relief other than or in addition to the payment of a sum of money is given, or judgment is given for the defendant in any proceeding in which relief other than or in addition to the payment of money is claimed, the costs shall be taxed upon the scale set out in column 1 of schedule C, if the action is in the District Court, and if the action is in the Supreme Court shall be taxed upon the scale set out in such column of the said schedule or such of the scales mentioned in Rule 21 (2) as the court or judge may direct, and in default of such direction shall be taxed according to column 2 of the said schedule, or according to the scale which would have applied if no relief other than the payment of money had been claimed, whichever is higher.

## 24

Costs in  
interlocutory  
proceedings  
may be fixed

**737.** Where in any interlocutory proceeding costs are directed to be paid, the scale upon which such costs are to be taxed, or the amount to be paid may be fixed by the court or judge by whom the direction is given, and if not fixed, such costs shall be taxed upon the same scale as the general costs of the action, subject to any direction which may be made by the court or a judge.

## 25

Costs of  
*ex parte*  
and other  
orders

**738.** No *ex parte* order shall contain any direction as to costs, and the costs of and incidental to any order whether *ex parte* or otherwise which are not provided for in the order shall, unless otherwise provided for in these Rules or unless a judge shall otherwise direct, be costs in the cause.

## 26

Scale of costs  
on appeals

**739.** On any appeal the scale of costs of the appeal, and if so stated in the judgment, also of the proceedings in the court below, shall be as directed by the judgment in appeal, or in default of direction shall be the same as that fixed under the order or judgment appealed from.

## 27

Costs recoverable  
in actions  
where relief  
claimed is a  
stated sum only,  
or a stated sum  
and foreclosure  
etc.

**740.** In any action in which the only relief claimed is the payment of a stated sum of money by way of damages or otherwise, or the payment of money with foreclosure or sale of property mortgaged or pledged to secure such money, no party or number of parties among whom there is no divergence of interest or who might properly have defended by one solicitor shall



(except with respect to the costs of any appeal) recover against any other party or parties to any proceeding, costs exclusive of disbursements in excess of the following proportions of the amount claimed or recovered:

Where the amount claimed or recovered does

not exceed \$100.....	50 per cent.
On the excess over \$100 up to \$1,000.....	15 per cent.
On the excess over \$1,000 up to \$10,000.....	10 per cent.
On the excess over \$10,000.....	5 per cent.

(2) In all other actions the limitation above mentioned shall apply upon the assumption that the amount claimed or recovered in the action is the highest amount under the scale upon which the costs are in the result of the action taxable.

(3) In every action in which a claim by way of damages is set up, the amount of money claimed in respect of such damages must be stated.

In other actions

If damages claimed, amount must be stated

**741.** Where costs are taxable separately by two or more parties among whom there is no divergence of interest, or who might properly have appeared by the same solicitor and been represented by the same counsel, and the sum of the bills taxable by each exceeds, or is likely to exceed, the total amount taxable to all such parties jointly, the division of such total among the parties shall be in the discretion of the court or judge by whom the costs are ordered to be paid, or if no such direction is given, in the discretion of the clerk.

(2) If such parties might properly have appeared by the same solicitor, but have not improperly been represented by separate counsel, the counsel fees to the additional counsel may be taxed in addition to the proportions aforesaid. [E. 1002.]

**28**  
Costs of persons in same interest but appearing by different solicitors, etc.

When counsel fee to separate counsel may be allowed

**742.** In any case where two or more issues of law and fact are raised upon the pleadings and success upon such issues is divided between the parties, the court or judge may direct the costs only of the more successful of the parties to be taxed and a proportionate part of the whole amount so taxed or of the whole amount taxable, whichever is the lower, to be allowed to such party or parties, and any such direction may either include or exclude the witness fees taxable by all or only some of the parties to whom costs are allowed as set out in schedule D hereto.

**29**  
Costs, where two or more issues of law and fact are raised and success divided between parties

Schedule "D"

**743.** Where it is inconvenient or impossible to make an order as in the last preceding rule mentioned, and any order is made or judgment given whereby any party is allowed costs except in so far as they have been occasioned or incurred by reason of or relating to any issue or any particular part of the proceedings, such order or judgment shall be read and construed as excluding only the amount by which the costs have been increased by such issue or proceedings.

**30**  
Where no direction, how judgment to be construed

**744.** No party to any proceedings shall be entitled to recover against any other party any sum for costs in excess of the sum for which he, or some other person, would in any event of the proceedings have become or be liable to any barristers and so-

**31**  
Amount recoverable for party and party costs

licitors retained by him; provided that in the absence of any rule or any agreement by any party to the contrary, such party shall be deemed to have become or be liable for costs at least to the amount which he may be found entitled to recover for costs against any other party.

**32**

Taxing officer  
may disallow  
costs increased  
by unnecessary  
delay, etc.

**745.** If upon any taxation it shall appear that the costs have been increased by unnecessary delay or by improper, vexatious, prolix or unnecessary proceedings, or by other misconduct or negligence, or that from any other cause the amount of the costs is excessive having regard to the nature of the business transacted or the interests involved or the money or value of property to which the costs relate, or to the other circumstances of the case, the taxing officer shall allow only such an amount of costs as may be reasonable and proper. [E. 986.]

**33**

Costs where  
judgment  
might have  
been recovered  
in District  
Court

**746.** When an action is brought in the Supreme Court and the plaintiff recovers a judgment which might have been recovered in the District Court and the judge makes no order to the contrary, the plaintiff shall recover only such costs as are appropriate to the judgment recovered and the defendant shall be entitled to tax his costs on the scale of costs appropriate to the plaintiff's claim and so much thereof as exceeds the taxable costs of defence which would have been incurred under the scale of costs appropriate to the judgment recovered shall be set off against the plaintiff's judgment and costs. [O. 1132.]

## COSTS AS BETWEEN SOLICITOR AND CLIENT.

**34**

Schedule "C"

**747.** As between solicitor and client such costs may be allowed as are mentioned in schedule C hereto in respect of the services therein referred to and in respect of other services such allowance may be made as may appear to be a reasonable amount to be paid by the client to the solicitor for the services performed, having regard to the nature, importance or urgency of the matters involved, the circumstances and interest of the person by whom the costs are payable, the fund out of which they are payable, the general conduct and costs of the proceedings, the skill, labour and responsibility involved, and all other circumstances, and having regard also, in proceedings to which the tariff in schedule C may be applied, to the fees allowed by such tariff as between party and party.

**35**

Solicitor and  
client may  
make agreement  
re payment of  
costs, etc.

**748.** A barrister and solicitor may make an agreement in writing with the client respecting the amount and manner of payment for the whole or any part of any past or future services, fees, charges or disbursements in respect of business done or to be done by such barrister and solicitor, either by a gross sum or by commission or percentage or by salary or otherwise, and either at the same or at a greater or a less rate as or than the rate at which he would otherwise be entitled to be remunerated:

Agreement  
to be allowed  
by taxing  
officer before  
costs payable  
thereunder

Provided always, that when any such agreement shall be made in respect of business done or to be done in any action the amount payable under the agreement shall not be receivable



by the barrister or solicitor until the agreement has been examined and allowed by the taxing officer of the court having power to enforce the agreement in the judicial district in which the solicitor resides, and either party may require the taxing officer to take the opinion of a judge thereon; and such judge shall have power either to reduce the amount payable under the agreement or order the agreement to be cancelled and the costs, fees, charges and disbursements in respect of the business done to be taxed in the same manner as if no such agreement had been made:

Judge may vary or cancel agreement

And provided further, that nothing herein contained shall be construed to give validity to any purchase by a barrister and solicitor of the interest or any part of the interest of his client in any suit, action or other contentious proceeding to be brought or maintained, or to give validity to any agreement by which a barrister or solicitor retained or employed to prosecute any suit, action or other contentious proceeding stipulates for payment only in the event of success in such suit, action or proceeding.

This rule not to give validity to purchase of interest by solicitor nor to agreement where payment depends on success

**749.** No such agreement shall be enforceable against any client unless it is in writing and signed by the client or his duly authorized agent in that behalf, and where an agreement has been made which is not enforceable by reason of this Rule and the client objects to its enforcement, the costs shall be such as would be payable in the absence of any agreement.

**36**

Agreement to be in writing and signed by client or his agent

**750.** Any provision in any such agreement relieving any barrister and solicitor from liability for negligence or any other liability to which he might be subject as barrister and solicitor shall be wholly void.

**37**

Certain provisions if in agreement void

**751.** Where a barrister and solicitor has made an agreement with his client in pursuance of the provisions of these Rules, and anything has been done by such barrister and solicitor under the agreement, and before the agreement has been completely performed by him, such barrister and solicitor dies or becomes incapable to act, an application may be made to the court to examine the agreement by any party thereto, or by the representatives of any such party, and the court shall thereupon have the same power to enforce or set aside such agreement, so far as the same may have been acted upon, as if such death or incapacity had not happened; and the court, if it shall deem the agreement to be in all respects fair and reasonable, may order the amount due in respect of the past performance of the agreement to be ascertained by taxation, and the taxing officer in ascertaining such amount shall have regard so far as may be to the terms of the agreement, and payment of the amount found to be due may be enforced in the same manner as if the agreement had been completely performed by the barrister and solicitor.

**38**

Procedure under agreement where solicitor dies or becomes incapable to act

**39**

Effect on  
agreement  
of change  
of solicitors  
by client

**752.** If after any such agreement as aforesaid shall have been made, the client shall change his solicitor before the conclusion of the business to which such agreement shall relate (which he shall be at liberty to do notwithstanding such agreement), the solicitor, party to such agreement, shall be deemed to have become incapable to act under the same within the meaning of the last preceding Rule; and upon any order being made for taxation of the amount due to such solicitor in respect of the part performance of such agreement, the court shall direct the taxing officer to have regard to the circumstances under which such change of solicitor has taken place; and, upon such taxation, the solicitor shall not be deemed entitled to the full amount of the remuneration agreed to be paid to him unless the judge making the order shall so direct.

**40**

Costs of  
barrister or  
solicitor who  
is also  
guardian, etc.

**753.** Any barrister and solicitor who is guardian, committee, mortgagee, executor, administrator or trustee shall be entitled as against the estate or fund or as against the mortgaged estate to make the same charges for services performed by him as barrister and solicitor for or in connection with the estate or fund or mortgaged property as might have been payable out of the estate or fund or been chargeable against the mortgaged estate if the barrister and solicitor had been employed as such by some other person acting as guardian, committee, mortgagee, executor, administrator or trustee.

**41**

Costs out  
of trust  
funds, etc.,  
against  
persons not  
*sui juris*

**754.** No costs shall be payable out of or chargeable against any trust estate, trust fund or mortgaged property as against any person interested therein, unless such person is *sui juris* and has consented to the payment of such costs, until after such costs have been taxed or allowed as hereinafter provided, whether or not the barrister and solicitor or some other person is the trustee, executor, administrator, guardian, committee, or mortgagee.

**42**

Solicitor may  
take payment  
in advance  
or security for  
his fees, etc.

**755.** Any barrister and solicitor may obtain payment in advance or take security for his future fees, charges or disbursements.

**43**

Taxing officer  
may allow  
interest on  
moneys  
disbursed, etc.

**756.** Upon every taxation of costs, fees, charges or disbursements, the taxing officer may allow interest at such rate and from such time as he thinks just on moneys disbursed by the solicitor for his client, and on moneys of the client in the hands of the solicitor, and improperly retained by him.

**44**

Court may  
give solicitor  
lien for costs  
and make order  
for payment,  
etc.

**757.** The court or a judge may on the application of a barrister and solicitor declare such barrister and solicitor to be entitled to a charge upon the property recovered or preserved through his instrumentality in any proceeding prosecuted or defended by him, for his proper fees and disbursements in reference to such proceeding, and may make such order or orders as may be just for the raising or payment of such fees and disbursements out of such property.



**758.** No act or thing shall defeat any such charge unless the property has been disposed of to a *bona fide* purchaser for value without notice. **45**  
What to affect lien

**759.** No order shall be made charging any property recovered or preserved in any case where the right of the barrister and solicitor to recover payment of his fees and disbursements is barred by any *Statute of Limitations*. **46**  
No lien where claim of solicitor is barred

**760.** A barrister and solicitor may bring an action for any costs due to him at any time after the same have been incurred; provided that no judgment shall be entered in any such action except upon the order of a judge who may direct a taxation, and no costs of such action shall be allowed to such barrister and solicitor except upon the order of a judge. **47**  
Action of solicitor for costs

TAXATION OF COSTS GENERALLY.

**761.** On any taxation, the taxing officer shall have power— **48**  
Powers of taxing officer on taxations

- (a) To take evidence either by affidavit or *viva voce* upon oath;
- (b) To direct the production of books, papers and documents;
- (c) To require notice of the taxation to be given to all persons who may be interested in the taxation or in the fund or estate out of which the costs are payable;
- (d) To require any party or person to be represented by a separate solicitor;
- (e) To allow or disallow the costs of the taxation or any part of them to or against any party or any person represented upon the taxation; provided that the costs of a taxation of a solicitor's bill upon the application of a client shall not be allowed against the client unless it shall appear to the taxing officer that the client has acted unreasonably in applying to have the same taxed, or the taxation thereof was unnecessary; and no costs of a taxation of a solicitor's bill against a client shall be allowed against the client upon a solicitor's application for taxation of his own bill against his client except by order of a judge;
- (f) The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any rule, or any order of the court or a judge, a time is appointed for any proceeding before or by a taxing officer, unless the court or a judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose unless required for any special purpose. [E. 1002.]

956 in ft.

**49**  
Taxing officer  
to have copy  
of bill and  
affidavit of  
disbursements  
before issue of  
appointment

**50**  
Bill to show  
fees and  
disbursements  
in separate  
columns

**51**  
Columns of  
bill to be cast

**52**  
Notice of  
taxation  
and service  
thereof

**53**  
Certificate  
of taxing  
officer

**54**  
Effect of  
certificate

**55**  
What officer  
shall tax

**56**  
Set-off  
of costs on  
taxation and  
procedure

**762.** Before the issue of any appointment to tax any bill of costs, a copy of the bill and of the affidavit of disbursements, if any, shall be deposited with the officer by whom such bill is to be taxed.

**763.** In every bill of costs, except a bill against a client, under such an agreement as is mentioned in Rule 35, the charges of barristers and solicitors shall be entered in a separate column from the disbursements.

**764.** Every column of every bill shall be cast before the bill is left for taxation.

**765.** One day's notice of any taxation shall be given to every party or person interested in such taxation by service of a copy of the appointment, together with a copy of the bill proposed to be taxed and of the affidavit of disbursements, if any; provided that no notice need be given of any taxation of costs as between party and party to any party to the proceedings who has not appeared therein.

**766.** On any taxation the taxing officer shall certify the amount of the costs taxed by him for and against each party or person and may give such interim certificates as may be convenient or necessary and may certify specially any circumstances.

**767.** Subject to appeal and the terms contained in the certificate or in the order under which the taxation has been made, any certificate given upon any taxation shall be final and conclusive as to the amounts therein mentioned against all persons who have received notice of the taxation.

#### TAXATION AS BETWEEN PARTY AND PARTY.

**768.** In the absence of other provision costs of any proceedings shall be taxed by the registrar, clerk or deputy clerk of the court, in whose office the proceedings are being carried on at the time of such taxation.

**769.** If notice of the taxation of any bill of costs is given, every party who is entitled to set off any other costs against the amount of such bill, or who is entitled to any other costs which are to be taxed with such bill either for the purpose of ascertaining the total amount of costs taxable against the party against whom the first mentioned bill is taxable or otherwise, or who is required to bring in a bill of any other costs for the purpose of ascertaining the amount of costs payable to the party by whom such first mentioned bill has been brought in, shall bring in a bill of such other costs within seven days after such notice or within such further time as the taxing officer may allow, and upon default such other party shall forfeit his right to such other costs, and the taxation may proceed accordingly.



957 (2) Any party liable to pay costs may obtain an appointment from the taxing officer calling upon the party entitled to the same to bring in a bill for taxation within such time as the taxing officer shall direct and unless such bill is brought in pursuant to such direction, or within such further time as the taxing officer shall appoint, the party entitled to the costs shall, unless the taxing officer shall otherwise direct, forfeit his right to the same.

Party liable to pay costs may obtain appointment to tax

958 770. Where in any proceeding any party liable to pay costs is also entitled to receive costs, the taxing officer may, notwithstanding any lien any solicitor may have for his costs, adjust the amount payable by way of deduction or set-off, or may delay the allowance of costs to one of the parties until he has paid or tendered any costs for which he may be liable.

57 Taxing officer may adjust costs, allowing set-offs, etc.

966 imple. 955 771. No allowance shall be made for any services, attendances or fees except the charges of barristers and solicitors and the fees paid to officers of the court, unless the payment therefor of the amount sought to be taxed is proved by affidavit which may be referred to as an affidavit of disbursements.

58 Payment of disbursements to be proved by affidavit before being allowed

772. No costs shall be taxed until after the order or judgment allowing such costs has been signed, entered or otherwise perfected.

59 Taxation of costs only after entry of judgment, etc.

773. Costs may be taxed under any judgment or order or award, notwithstanding any stay of the proceedings in which such judgment, order or award was given or made, unless the stay applies expressly to such taxation.

60 Taxation stayed only when expressly ordered

TAXATION AS BETWEEN SOLICITOR AND CLIENT.

774. Every bill of costs to be taxed as between any barrister and solicitor and a client shall be signed by the barrister and solicitor or by one of the members of the firm of barristers and solicitors by which the costs are claimed.

61 Bills of costs to be signed by solicitors

775. Every bill of costs to be taxed against a client under such an agreement as mentioned in Rule 35, shall give sufficient information as to the work done, time spent or moneys collected or expended and other matters as may be required for a complete understanding of the claims made, and there shall appear thereon or be attached thereto a copy of the agreement if in writing, or, if not, a full memorandum of the terms thereof with a statement that the client has been informed that the agreement is voidable at his instance, but has not made any objection to the enforcement thereof.

62 What solicitor and client's bill to show

776. Any such agreement shall, as against any person liable to pay any costs, be allowed only to the extent to which the same is fair and reasonable in the circumstances, and may be allowed or disallowed in whole or in part as well with respect to sums paid thereunder as to sums remaining unpaid.

63 Agreement must be reasonable

**64**

When and  
where bill  
may be taxed

**777.** Any barrister and solicitor at any time after the delivery of a taxable bill, and, subject to the provisions of Rule 67, any person to whom a taxable bill has been delivered may obtain an appointment from the taxing officer of the judicial district in which the office of the barrister or solicitor is situated, or such other taxing officer as a judge may direct.

**65**

Delivery  
of bill,  
how proved

**778.** To prove the delivery of a taxable bill of costs it shall be sufficient to prove by affidavit that a bill with the particulars of the amount claimed and signed as aforesaid, was delivered or mailed to the party to be charged, or one of the parties to be charged or his agent in that behalf, at his proper address, and a sufficient bill shall thereupon be deemed to have been received at the time of such delivery or in the ordinary course of mail, as the case may be, unless the contrary is shown.

**66**

Person liable  
to pay costs  
may apply  
*ex parte*  
for order for  
taxation

**779.** Any person from whom a barrister and solicitor has demanded any sum for costs or any person who may be liable, or who is interested in any estate or fund which may be liable for the payment of any costs may apply to the court or a judge *ex parte* for the taxation of such costs, and upon such application the judge may direct the delivery of a taxable bill and may refer the bill for taxation to a taxing officer.

**67**

Limitation  
as to right  
to demand  
taxation

**780.** No bill shall be subject to taxation after payment thereof or after the expiration of one year from the delivery thereof, except upon the order of a judge made on notice under special circumstances, to be proved to the satisfaction of the judge, and upon such terms, conditions and directions, as the judge may think proper, but no such reference under any circumstances shall be made after the expiration of two years after payment.

**68**

How payment  
after taxation  
may be  
enforced

**781.** Upon any bill of costs being taxed payment thereof may be enforced upon the order of a judge to be obtained on notice, but where any order has been made by a judge for the delivery of a taxable bill, or for the taxation thereof, such order may provide for the payment thereof when the same has been taxed.

**69**

Application  
for taxation  
to a judge,  
and order

**782.** Any application for the taxation of a bill of costs shall be intituled "In the matter of the taxation of the costs of . . . . . a barrister and solicitor," and upon any such application such order as may be just may be made for the delivery up by the barrister and solicitor of any deeds, documents or papers of the client in the possession of the barrister and solicitor.

**70**

When bill may  
be taxed a  
second time

**783.** Where a bill of costs has been taxed it shall not be referred for taxation a second time, except under special circumstances.

#### APPEALS FROM TAXATIONS.

**71**

Who may  
appeal from  
taxation,  
when and how

**784.** Any person pecuniarily interested in the result of any taxation may within forty-eight hours after its completion, or after he has received notice of the issue of any interim certificate file with the officer by whom the bill was taxed written objec-



tions to the taxation specifying the items objected to and the grounds of objection thereto, and within forty-eight hours thereafter he may serve upon the opposite party notice of a motion to be made to a judge in chambers within seven days thereafter by way of appeal from the taxation, but upon such appeal he shall be confined to the items objected to and the grounds of objection taken in the written objections filed with the clerk.

**785.** On any such appeal, the judge may exercise any of the powers which might have been exercised by the taxing officer upon the taxation and any discretion exercised by the taxing officer shall be subject to review as fully as if the taxation had been made by the judge in the first instance. **72** Powers of judge hearing appeal

(2) If a writ of execution has been issued for costs which are reduced on appeal, the writ of execution shall be returned to the clerk issuing the same for amendment in accordance with the order made upon the appeal; and if the amount as originally taxed by the taxing officer has been paid and after payment thereof such amount be reduced on appeal the judge may order the return of the excess by the party who has received the same and execution may be issued upon such order for such excess, and if such costs have been paid to a solicitor, such solicitor may be ordered to return such excess and such order may be enforced by attachment. Writ of execution or payment of costs, how affected by result of appeal

## SCHEDULE C.

SCHEDULE C.		Column 1	Column 2	Column 3	Column 4	Column 5
		Not exceeding \$400	Over \$400 and under \$1,000	\$1,000 or more	\$2,000 or more	\$5,000 or more
1.	Commencement of proceedings by statement of claim, petition, or originating notice—					
	(a) Where one defendant or opposite party.....	\$15.00	\$25.00	\$30.00	\$35.00	\$40.00
	(b) For each additional defendant or opposite party.....	1.00	2.00	.....	.....	.....
2.	Garnishee process—					
	(a) Where only one garnishee.....	4.00	7.00	.....	.....	.....
	(b) For each additional garnishee.....	.75	1.50	.....	.....	.....
3.	Proceedings in replevin or attachment—					
	(a) Where only one defendant.....	10.00	15.00	.....	.....	.....
	(b) For each additional defendant.....	.50	1.00	.....	.....	.....
4.	Commencement of third party proceedings—					
	(a) Where one third party.....	10.00	15.00	20.00	25.00	30.00
	(b) For each additional third party.....	1.00	1.50	.....	.....	.....
5.	Service of process by mail or where taxable on sheriff's default or obtaining undertaking to defend—	.50	1.00	.....	.....	.....
	(a) Where one third party.....	2.00	1.00	.....	.....	.....
6.	Correspondence effecting service of process out of the jurisdiction....					
7.	Defence or defence and counterclaim by defendant or third party in any proceeding commenced by statement of claim.....	10.00	15.00	20.00	25.00	40.00
8.	Proceedings to appearance for party served with judgment or order..	12.00	15.00	20.00	25.00	30.00
9.	Defence to counterclaim.....	2.00	4.00	.....	.....	.....
10.	Reply (where special and not joined with defence to counterclaim) or amending pleadings (where taxable).....	5.00	10.00	15.00	20.00	35.00
11.	Joinder of issue where necessary to close pleadings to set down for trial	2.50	5.00	10.00	15.00	20.00
12.	Motions and Applications—	1.00	2.00	.....	.....	.....
13.	(a) On applications for directions (to be allowed only once in any action).....	15.00	25.00	30.00	40.00	50.00



SCHEDULE C.—(Continued)

SCHEDULE C.	Column 1	Column 2	Column 3	Column 4	Column 5
	Not exceeding \$400	Over \$400 and under \$1,000	\$1,000 or more	\$2,000 or more	\$5,000 or more
(b) On applications, except applications for directions, having reference to questions of practice or procedure.....	\$12.00	\$15.00	\$18.00	\$20.00	\$25.00
(c) On such applications when <i>ex parte</i> or unopposed.....	8.00	12.00	.....	.....	.....
(d) Motions for judgment, injunction, the appointment of a receiver or other special applications, including appeals from master or local judge when opposed.....	15.00	25.00	30.00	40.00	50.00
(e) On such applications when <i>ex parte</i> or unopposed.....	10.00	15.00	18.00	20.00	25.00
(f) On adjournment of motion or application where counsel attends (where taxable).....	2.00	3.00	5.00	7.00	10.00
14. Examination of parties or witnesses before trial or in aid of execution at place of residence of solicitor—					
(a) Where one witness or opposite party examined.....	8.00	15.00	18.00	20.00	30.00
(b) For each additional witness or opposite party.....	5.00	10.00	10.00	12.00	15.00
(c) For attending on examination of a party or witness by an opposite party.....	5.00	10.00	10.00	12.00	15.00
15. Examination of witnesses or parties before trial or in aid of execution elsewhere than at residence of solicitor, when solicitor's attendance thereon is shown to be reasonably necessary, the proper travelling expenses of solicitor and for each day he is necessarily absent from his residence.....	10.00	15.00	18.00	25.00	30.00
16. Affidavit on production.....	5.00	10.00	15.00	20.00	25.00
17. Preparation (including inspection of documents) for trial or adjourned trial or a reference upon which witnesses are examined <i>voce voce</i> —					
(a) Where not more than two witnesses are examined or their evidence briefed on behalf of the party taxing costs.....	10.00	15.00	20.00	30.00	40.00

SCHEDULE C.—(Continued)

SCHEDULE C.	Column 1					Column 2					Column 3					Column 4					Column 5				
	Not exceeding \$400					Over \$400 and under \$1,000					\$1,000 or more					\$2,000 or more					\$5,000 or more				
(b) For each witness in excess of two examined or their evidence briefed on behalf of or by the party taxing costs.....	\$ 1.00					\$ 2.00					\$ 3.00					\$ 5.00					\$10.00				
18. Notice to admit facts or documents if admissions made or it appears that they (or a material part of them) should have been made, or consideration of admissions after notice unless not made and it appears that they (or a material part of them) should have been made.....	5.00					10.00					15.00					20.00					25.00				
19. Setting down for trial, including notice of trial and copy of pleadings for use of judge.....	3.00					5.00					.....					.....					.....				
20. Counsel fee with brief for trial— (a) To first counsel..... (b) To second counsel or solicitor in important cases.....	25.00					40.00					50.00					60.00					75.00				
21. Counsel fee at trial for each full half day occupied after the first full half day, a proportionate allowance to be made for any part of a half day required to conclude the trial after the first or any subsequent full half day— (a) To first counsel..... (b) To second counsel or solicitor in important cases.....	.....					.....					15.00					20.00					35.00				
22. Adjournment of trial.....	5.00					10.00					10.00					12.50					15.00				
23. Entry of any order or of judgment by default.....	4.00					6.00					.....					.....					.....				
24. Entry of judgment after contest.....	5.00					10.00					.....					.....					.....				
25. Issue of one writ of execution..... (a) Every alias.....	3.00					6.00					.....					.....					.....				
26. Renewal of each writ of execution.....	2.00					4.00					.....					.....					.....				
27. Attendance on reference under order or judgment— (a) Where reference lasts only or less than one full half day's sitting of from 2½ to 3½ hours.....	8.00					12.00					15.00					18.00					20.00				



SCHEDULE C.—(Continued)

SCHEDULE C.	Column 1	Column 2	Column 3	Column 4	Column 5
	Not exceeding \$400	Over \$400 and under \$1,000	\$1,000 or more	\$2,000 or more	\$5,000 or more
(b) For each full half day occupied after the first full half day, a proportionate allowance to be made for any part of a half day required to conclude the reference after the first or any subsequent full half day.....	\$ 8.00	\$10.00	\$12.00	\$15.00	\$15.00
27a. For attendance taking accounts or making or verifying computations under a judge's order, or order of the court, or reference where no examination of witnesses is necessary, per hour or fraction thereof.....	2.00	2.00	2.00	2.00	2.00
28. Settling issue or report.....	3.00	5.00	8.00	10.00	12.00
29. Obtaining payment out of court.....	1.00	3.00	.....	.....	.....
30. Correspondence with agents where proceedings carried on in clerk's office elsewhere than where solicitor resides or with client or his agent where he resides elsewhere than at residence of solicitor, an amount not exceeding.....	5.00	10.00	12.00	15.00	25.00
31. Instructions to agents upon examinations conducted by agents elsewhere than at place of residence of solicitor.....	3.00	5.00	10.00	15.00	20.00
32. Settlement of action— (a) Before case set down for trial.....	5.00	10.00	15.00	20.00	25.00
(b) After case set down for trial.....	10.00	15.00	20.00	30.00	40.00
33. Sale of lands under order or judgment (exclusive of attendance at sale) whether abortive or not.....	15.00	20.00	25.00	35.00	45.00
34. Solicitor attending sale, whether abortive or not— (a) When held where solicitor resides.....	3.00	5.00	10.00	15.00	20.00
(b) When held elsewhere.....	8.00	12.00	20.00	30.00	40.00
35. Preparing for hearing of appeal to Appellate Division— (a) To appellant.....	20.00	35.00	40.00	45.00	50.00
(b) To respondent.....	10.00	15.00	20.00	25.00	30.00

## SCHEDULE C.—(Continued)

SCHEDULE C.		Column 1	Column 2	Column 3	Column 4	Column 5
		Not exceeding \$400	Over \$400 and under \$1,000	\$1,000 or more	\$2,000 or more	\$5,000 or more
36.	On argument before Appellate Division for the first full half day's sitting of from 2½ to 3½ hours or any part thereof if hearing concluded in only or less than one full day—					
	(a) To first counsel.....	\$25.00	\$45.00	\$50.00	\$60.00	\$75.00
	(b) To second counsel in important cases.....	.....	.....	15.00	20.00	25.00
37.	On argument before Appellate Division for each full half day occupied after the first full half day, a proportionate allowance to be made for any part of a half day required to conclude hearing after the first or any subsequent full half day—					
	(a) To first counsel.....	.....	15.00	20.00	25.00	35.00
	(b) To second counsel in important cases.....	.....	.....	10.00	15.00	20.00
38.	Entering judgment in appeal.....	4.00	8.00	.....	.....	.....
39.	On appeals from convictions.....	25.00	.....	.....	.....	.....
40.	Instructions for and preparing all papers, making every application to the court, and for doing every act, matter or thing whatsoever in connection with a distress seizure or sale, under extra-judicial process (order in Council Nov. 2nd, 1914).....	5.00	7.50	10.00	.....	.....
41.	Instructions and all applications, entry of, and filing order for sale after seizure under judicial process (Order in Council, Nov. 2, 1914).....	3.00	5.00	7.50	.....	.....



SCHEDULE D.

In Dis. In Sup.  
Court Court

Allowances to witnesses, jurors and interpreters, subject to be increased under special circumstances by a judge—

For every day or part of a day required for going to, staying at and returning from the place of trial.

(a) Where such witness is a barrister, solicitor, physician, surgeon, registered professional engineer, surveyor, chartered accountant or architect, not a party to the cause, and is called in consequence of professional services rendered by him or to give expert evidence:

(1) At place of residence.....	\$ 3.00	\$ 5.00
(2) Elsewhere .....	5.00	10.00

(b) To any other witnesses called to give expert evidence, half of the above amounts.

(c) In other cases.....	1.00	2.00
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For every mile actually travelled by such witness, juror or interpreter, in going to and returning from the place of trial otherwise than by railway or public steamboat .....

.10	.10
-----	-----

The taxing officer may allow an additional sum to an interpreter under special circumstances, not to exceed .....

5.00	5.00
------	------

The amount actually paid for railway or steamboat fare.

The amount actually paid for sleeping accommodation and food while going to, and returning from the place of trial, not more than \$2.00 a night being allowed for sleeping accommodation or more than \$3.00 per day for food while the journey continues, and for food and sleeping accommodation while staying at place of trial, the amount actually and reasonably paid in the discretion of the taxing officer.

SCHEDULE E.

FEES OF OFFICIALS.

REGISTRAR'S FEES.

1. On receiving appeal books and inscribing cause and attending court on hearing..... \$6.00
2. Instead of the last mentioned fee, on inscribing any cause, special or stated case or matter referred to the court by a judge and attending the court on argument (if so directed by the judge)..... 3.00
3. For receiving and filing factums received from each side and forwarding copies to judges..... 2.00
4. Postage paid.
5. Entering and registering every judgment, decree, rule or order up to five folios..... 2.00  
For each additional folio of 100 words..... .20
6. Entering every final judgment of the court..... 4.00
7. Every writ or other process..... 2.00
8. Every filing..... .10
9. Every certificate, with or without seal of court..... 1.00
10. Copies of proceedings, per folio of 100 words..... .10
11. Every search..... .25
12. Every oath administered..... .25
13. Every motion or argument not otherwise provided for..... 2.00
14. Every taxation of costs, per hour or fraction of an hour..... 2.00

15. Certifying appeal book to the Supreme Court of Canada or the Judicial Committee of the Privy Council..... \$6.00
16. Settling judgment, decree, rule, order or bond upon appointment per hour or fraction thereof..... 2.00

For other services in any cause or matter before the Appellate Division, except in criminal cases, such items of the tariff of fees payable to the Clerk of the Supreme Court as may be applicable, shall be allowed.

	CLERK'S FEES.		Supreme Court	District Court
1. Receiving and entering in docket every claim for suit and preparing and issuing original process, including statement of claim, petition or originating summons, or notice.....			\$ 4.00	\$ 3.00
2. Each copy of claim when not provided by party applying for process.....		.60		.40
If over 2 folios, per folio additional.....		.10		.10
3. Entering any defence and filing.....		2.00		1.00
4. Entering and filing every demand for notice of proceedings.....		.50		.25
5. Entering and recording every final judgment or verdict (including necessary filings).....		4.00		3.00
If exceeding 5 folios, for each additional folio....		.20		.20
6. Every judge's order (including filings).....		2.00		1.50
If exceeding 5 folios, for each additional folio....		.20		.20
6a. Garnishee summons.....		1.00		.75
7. Entry of satisfaction of judgment.....		2.00		1.00
8. Examining bond and affidavits thereon for security for costs.....		1.00		.50
9. Taxation of costs, per hour or fraction thereof....		2.00		1.50
10. Settling judgments, per hour.....		2.00		1.50
11. Preparing special jury list for striking jury panel.....		3.00		....
12. Every filing not otherwise provided for.....		.10		.10
13. Every writ or final process.....		4.00		2.00
If over 3 folios, per folio additional.....		.20		.20
14. Every renewal of writ or statement of claim.....		.75		.50
15. Every search within one year, or when correct reference number is given.....		.25		.25
16. Every search beyond one year, or when correct reference number is not given.....		.50		.50
17. Each general search.....		.50		.50
18. Examining every affidavit necessary for the issue of process.....		1.00		.75
19. Every commission or exemplification of judgment.....		2.00		1.00
If over 5 folios, per folio.....		.10		.10
20. Comparing and certifying record.....		2.00		1.00
21. Setting down every case or matter for trial or argument in court, including swearing witnesses and jurors, and filing exhibits.....		3.00		2.00
22. Every amendment whether alteration or substitution.....		1.00		.50
23. Taking accounts of verifying computations under judge's order or order of court, or reference, per hour or fraction thereof.....		2.00		1.50
23a. Fee on each report on reference when it does not exceed 5 folios.....		3.00		2.00
For each additional folio.....		.25		.25
23b. Fee on each order on reference.....		2.00		1.50
24. Examination for discovery, examination or cross-examination of witness, including swearing witness and certifying depositions per hour or fraction thereof.....		2.00		1.50
25. Every appointment.....		.30		.20



	Supreme Court	District Court
26. Swearing every witness.....	\$ .25	\$ .25
27. Every certificate, with or without seal of Court...	1.00	1.00
28. Certifying appeal book.....	5.00	5.00
29. Copies of evidence or papers filed, per folio.....	.10	.10
30. Necessary postage disbursed.		
31. Upon payment of money into Court, \$100 or under	.50	.50
Over \$100 but not exceeding \$500.....	1.00	.75
More than \$500.....	2.00	1.50
32. Upon payment of money out of Court, \$100 or under	.50	.50
Over \$100 but not exceeding \$500.....	1.00	.75
More than \$500.....	2.00	1.50

FEES OF SHERIFFS IN CIVIL MATTERS.

GENERAL MATTERS.

1. Receiving, filing, entering and indorsing all Writs, Pleadings, Orders, Rules, Notices or other papers, each .....	\$ .50	\$ .25
2. Return of all Process, Writs, Orders, Documents and other papers.....	.25	.25
3. Every search, not being by a party to a cause or his solicitor .....	.25	.25
4. Certificate under seal or not.....	1.00	1.00
5. Every Warrant to execute any Process, mesne or final, directed to the Sheriff, when given to a Bailiff	.50	.50
6. Every letter necessarily written respecting writs or process, claims, interpleader issues, distribution of moneys required by a party or his solicitor....	.25	.25
7. For making every affidavit (other than of service) besides fee paid out of oath.....	.25	.25
8. Such sums as may be actually disbursed for advertising sales or in cases required by law, and such sums for possession, care and removal of property seized or taken as may be approved (in each case) by the court or a judge.....		

SERVICE OF PROCESS AND PAPERS

9. Every service.....	.50	.25
10. Every affidavit of service exclusive of fee paid commissioner, etc. ....	.25	.25
11. Paid oath .....	.25	.25
12. For each exhibit.....	.10	.10

MILEAGE

13. Actual and necessary mileage travelled and sworn to from the place where same is severally received or the Sheriff's office (whichever is nearer) to the place where service of any process, paper or proceeding is made, and return, per mile.....	.20	.20
Where wrong address is given by the plaintiff or his solicitor and sheriff acts upon such information and service is not effected by reason of the party to be served not being found at the address or in the vicinity, actual expenses incurred, including mileage to be paid by the party in fault.		

## RULES OF COURT

ARREST, ATTACHMENT AND SEIZURE. Supreme District  
Court Court

14. For every arrest under warrant.....	\$ 2.00	\$ 2.00
15. For every bond required to be taken to the Sheriff	2.00	2.00
16. Assignment of the same.....	2.00	2.00
17. Mileage going to arrest when made, per mile.....	.15	.15
18. Mileage conveying party arrested from place of arrest to the gaol, per mile.....	.15	.15
19. Bringing up prisoner on attachment or Habeas Corpus, besides travel at 20c per mile.....	2.00	2.00
20. For seizing estate or effects under attachment or execution .....	2.00	1.00
21. Actual and necessary mileage both ways, travelled and sworn to, replevying goods or executing any writ or other process or order.....	.20	.20
Where mileage actually travelled under instructions from Plaintiff or his solicitor and no seizure made by reason of their being no goods liable to seizure or by reason of wrong address given, actual expenses incurred, including mileage to be paid by the party in fault.		

## ABSCONDING DEBTORS.

22. Seizing estate and effects on attachment against absconding debtor .....	3.00	1.50
23. Valuers, each .....	1.00	1.00
24. Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the Taxing Officer, the Court or a Judge.		

## SALES, POUNDAGE, ETC.

25. For poundage on executions and attachments in the nature of execution, when the sum realized shall not exceed \$400, five per cent.; when the sum realized is over \$400 and does not exceed \$4,000, five per cent. for \$400, two and one-half per cent. for the balance up to \$4,000; and when the sum realized is over \$4,000, five per cent. for \$400, two and one-half per cent. from \$400 to \$4,000, and one and one-quarter per cent. for the balance.		
26. Schedule taken on execution, attachment or other process, including copy for defendant, not exceed- ing 5 folios.....	1.00	1.00
27. Each folio above 5.....	.15	.15
28. Drawing advertisements when required by law to be published in the Official Gazette, or other news- paper, or to be posted up in a Court House or other place, and transmitting same, in each suit.....	1.00	1.00
29. Every necessary copy of notice of sale of goods (not more than ten) each.....	.10	.10
30. Posting necessary notices, each.....	.50	.25
31. Every notice of postponement of sale, in each suit	.50	.25
32. When the goods to be sold consist of a merchant's stock, and where in the opinion of a judge it was necessary for the Sheriff to employ the assistance of an expert in making an inventory and valuation, such sum may be allowed as is actually and reason- ably disbursed for such assistance, and as may be approved in each case by a judge.		

## REPLEVIN.

33. Precept or warrant to Bailiff in replevin.....	.50	.50
34. Drawing notice for service on defendant in replevin	.50	.25



	Supreme Court	District Court
35. Delivering goods to the party obtaining the order of replevin.....	\$ 3.00	\$ 2.00
36. Replevin Bond .....	2.00	1.00
37. Assignment .....	2.00	1.00

SEQUESTRATION.

38. Upon seizure of estate and effects under writ of sequestration .....	3.00	1.50
39. Schedule of goods taken in execution (including copy for defendant) if not exceeding five folios..	1.00	.50
40. Each folio above five.....	.15	.15
41. Removing or retaining property, reasonable and necessary disbursements and allowances to be made by the Court or Judge. (Poundage upon sequestration followed by sale and collection as on other executions.)		

WRIT OF POSSESSION.

42. Executing writ of possession or restitution.....	4.00	2.00
--	------	------

JURIES.

43. Fee for selecting jurors and preparing list.....	5.00	....
44. Serving each juror (besides mileage at 20c per mile) .....	1.00	....
45. Keeping and checking pay list of jurors' attendance, in each case.....	1.00	....
46. Attendance at Court when necessary, per diem...	5.00	....
Fees payable on references before a local Judge or Master in		

FEEES PAYABLE ON REFERENCES BEFORE A LOCAL JUDGE OR MASTER IN CHAMBERS WHEN ACTING AS REFEREE UNDER CONSOLIDATED RULE 542 AND IN WINDING-UP MATTERS:

1. Filing and entering judgment or order in Referee's Book	\$ .25
2. Every appointment .....	1.00
3. Administering oath or affirmation.....	.25
4. Marking each exhibit.....	.25
5. Every hearing, or attendance upon any proceeding when witnesses are not called, per hour or fraction thereof....	2.00
6. Every hearing where witnesses are called and examined, per hour or fraction thereof.....	4.00
7. Fee on each report where it does not exceed five folios....	3.00
For each additional folio.....	.25
8. Fee on each order.....	2.00
9. For each certificate.....	1.00
10. Taxing costs, per hour or fraction thereof.....	2.00
11. Every special attendance outside the office, per hour or fraction thereof .....	4.00

RULES RELATING TO SMALL DEBT PROCEDURE IN THE DISTRICT COURTS.

**786.** In all claims and demands for debt, whether payable in money or otherwise, where the amount or balance claimed does not exceed \$100, the procedure shall, unless otherwise ordered or allowed by a judge, be as set out in Rules 2 to 30 inclusive. 1  
Claims  
for debt  
under \$100

**787.** Every plaintiff when he enters an action with the clerk shall do so by leaving with him (by post or otherwise) a simple statement in writing (with a copy to file and one for each copy 2  
Entry of  
action

Particulars  
of claim

of summons desired) of the cause of action. Such statement may, in the case of an account, be in the usual form of items of an account or otherwise, and in the case of a bill, note, order, or any other written instrument, may be in the form of a copy of such instrument, or in the form of a concise statement of its purport or effect, setting out the date and other particulars, and in all cases such statement shall exhibit the grounds of action, so that it may be known or understood by a person of ordinary intelligence what the action is brought for. The clerk shall attach such statement to the summons and shall attach to each copy of the summons a copy of such statement; provided that the statement may be endorsed upon the summons and the copies thereof.

May be  
endorsed on  
summons

### 3

Addresses  
of parties

**788.** The plaintiff shall also at the time he so delivers his statement to the clerk inform him of his post office address, of the full name of the defendant, where practicable, and also of the defendant's place of residence and post office address with as much certainty and particularity as possible.

### 4

Entry of  
claim

Issue of  
summons

**789.** Upon receipt of such claim and upon payment of the proper fees therefor the clerk shall enter such claim in the procedure book, to be kept by him for that purpose, and shall issue a summons, corresponding in substance with form H in the schedule hereto, which summons shall be filled up by him and shall be without blanks either in date or otherwise, and shall also make out and furnish as many copies of the said summons as there are defendants and shall attach to each a copy of the dispute note in form L in the schedule hereto.

### 5

Delivery of  
summons

**790.** Upon the issue of the said summons the clerk shall deliver or transmit the same and the copies thereof with the copies of claim attached thereto or endorsed thereon, to the plaintiff or as he may direct, and shall attach to the original summons a copy of the dispute note in the said form L and as many copies of the affidavit of service in form K in the schedule hereto as there are defendants in the said suit.

### 6

Time for entry  
of dispute

Within  
district

Within  
province

Outside the  
province

**791.** The defendant shall have the following time within which to pay the claim or enter a dispute, viz.:

(1) Where the defendant resides in the district in which the summons issued, twenty days from the service of the summons;

(2) Where the defendant resides in the Province of Alberta but outside the district in which such summons issued, twenty-five days from the service thereof;

(3) Where the defendant resides in any place in Canada outside the said province, or in the United Kingdom, or in the United States of America, thirty days from the service thereof;

(4) In none of the above cases shall it be necessary to obtain an order for service out of the jurisdiction.

### 7

Service of  
summons  
by mail

**792.** A summons or garnishee summons may be served on the defendant by registered mail if the post office receipt for the letter containing such document purporting to be signed by

the defendant be produced; and the affidavit of service in such cases shall be in form K. A charge of fifteen cents may be made if service is effected in this manner.

(2) The summons or garnishee summons shall be deemed to have been served on the day of the date of the receipt which purports to be signed by the defendant.

**793.** The clerk shall notify the plaintiff or his solicitor whether the defendant has entered a dispute or has paid the claim in full, or part, and in case a dispute has been entered he shall within five days after entry thereof send particulars of the same to all parties to the action, addressed to their respective addresses for service, by mail, and a notice of the place and date of trial which shall be the first sittings of the court at the place named, after the lapse of twenty days from the date of such notice. **8**  
Clerk to  
notify  
plaintiff of  
dispute or  
payment

**794.** After the expiration of the time limited for dispute if no dispute has been entered the clerk shall, upon the summons being returned to him with proof of service thereof on the defendant, and upon the request of the plaintiff, sign judgment against the defendant for the full amount of the claim and costs. **9**  
Judgment in  
default of  
dispute

**795.** In case the defendant disputes part of the plaintiff's claim only and the plaintiff elects to accept the undisputed part in full of his claim the clerk shall, upon the request of the plaintiff, sign judgment for the undisputed part, and, unless the defendant has stated in his dispute note that any amount paid in by him with such dispute note was before action tendered to the plaintiff, tax to the plaintiff and include in such judgment the lawful costs. In case the plaintiff elects as above and judgment is signed the clerk shall forthwith notify the defendant that judgment has been so signed against him, but on such judgment execution shall not issue before the expiration of twenty days from the date of the judgment. **10**  
Judgment  
in case of  
partial  
dispute  
  
Tender  
  
Notice  
thereof to  
defendant

**796.** The judge may set aside any judgment signed under Rules 9 and 10 or stay proceedings thereon on such terms as may seem just. **11**  
Default  
judgment may  
be set aside

**797.** The clerk shall sign judgment in all cases by endorsing upon the summons over his signature a memorandum showing the authority for entering it, whether by default or otherwise, the items of claim and costs, if any, included therein, and the date of judgment, and shall make an entry in his procedure book that judgment has been entered, and particulars thereof, and such endorsement on the summons shall be the judgment of the court and execution may issue, and other lawful proceedings be taken thereon. **12**  
Judgment,  
how signed  
and execution

**798.** In all cases when judgment has been entered the clerk may pay out to the party, in whose favour the judgment is, any moneys in court to the credit of the action, unless otherwise ordered. **13**  
Payment  
out after  
judgment



**14**  
Dispute note

**799.** If the defendant desires to defend any action or suit he must cause to be delivered by post or otherwise to the clerk before the entry of judgment, a written dispute note in form L in the schedule hereto, in which shall be stated briefly the nature or grounds of his defence, and where a claim is disputed in part only he shall state what part thereof or what items he disputes. If he alleges tender before action he must state in his dispute note the time and place of such tender and pay into court the amount tendered. The defendant shall in his notice of dispute give his post office address.

Tender

Defendant's  
address

**15**  
Set-off or  
counter claim

**800.** A defendant in any action may set off or set up by way of counterclaim against the claim of the plaintiff any right or claim whether such set-off or counterclaim sounds in damages or not; such set-off or counterclaim shall have the same effect as if such relief were sought in a cross-action, so as to enable the court to pronounce a final judgment in the same action both on the original and on the cross-claim.

**16**  
Place of trial

**801.** If a dispute is entered the action shall be tried at the place at which a sitting of the court is held nearest to the place where the cause of action arose or where the defendant or any one of the defendants resides or carries on a business at the time the action is entered and the place of trial in each action shall be named by the plaintiff in the statement of his claim.

**17**  
Setting down  
for trial  
Time of trial

**802.** The clerk shall set the cause down for trial at such sittings of the court and at such place as is hereinbefore mentioned.

**18**  
Place of trial  
wrongly laid

**803.** Where in the opinion of the judge having regard to the provisions of Rule 16, the place of trial has been wrongly named by the plaintiff, he shall have the power either to change the place of trial on such terms as to costs or otherwise as to him seems just, or in his discretion to order the plaintiff to pay any extra costs occasioned to the defendant by reason of the place of trial having been so wrongly laid.

**19**

**804.** The place of trial in all actions entered previous to the promulgation of these Rules shall be fixed by the judge, having regard to the provisions of Rule 16.

**20**  
Motion to strike  
out dispute note  
and for  
judgment

**805.** The above Rules shall in no wise affect the right of the plaintiff to move to strike out the said dispute note and for judgment or in any way curtail the powers given under Rule 28 hereof.

**21**  
Representation  
at trial

**806.** Any party to an action may be represented on the trial in person or by a solicitor or agent; provided that such agent be not a solicitor or barrister under suspension or struck off the rolls.

**22**  
Postponement  
of trial

**807.** At any time before the trial of the action either of the parties may on reasonable notice to the other party or at the

trial without notice apply for a postponement of the trial, and the judge may thereupon give such direction as to postponement and as to costs as he may deem fit.

**808.** All notices, summonses to show cause and orders required to be served upon any party to the action may, unless otherwise ordered by the judge, be served by mailing the same to him by registered post to the post office address given by him to the clerk of the court in the statement of his claim or in his dispute note, or if there is no dispute note or no address is given by the defendant, then to the defendant's address given in the statement of the plaintiff's claim. **23**  
Service of  
papers

**809.** Unless the judge shall otherwise order, in case any action falling within the class provided for in these Rules is brought under the general procedure and the plaintiff succeeds, or in case in an action of debt brought under the general procedure to recover over \$100 the plaintiff recovers less than that sum, his costs shall be taxed as though the action had been brought under the provisions of these Rules; and in any such action the judge may order that the defendant shall be entitled to set off his taxed costs of suit between solicitor and client, and if such set-off be ordered so much thereof as exceeds the taxable costs of defence which would have been incurred had the proceedings been had under these Rules shall on entering judgment be set off and allowed by the clerk against the plaintiff's costs to be taxed, or against the costs to be taxed and the amount of the judgment if it be necessary, and if the amount of the costs so set off exceeds the amount of the plaintiff's judgment and taxed costs the defendant shall be entitled to judgment for the excess against the plaintiff. **24**  
Costs of action  
wrongly brought  
or where less  
than \$100 is  
recovered  
  
Judge may  
order set-off

**810.** In every case where a solicitor is employed by the successful party, the clerk, in addition to all other costs, shall, unless otherwise ordered, tax to the successful party a solicitor's fee equal in undefended actions to five per centum and in defended actions to ten per centum of the amount of the judgment recovered if such fee is taxable to the plaintiff, or to the defendant upon a counterclaim or equal to ten per centum of the amount claimed by the plaintiff or by the defendant in his counterclaim, if such fee is taxable to the defendant in respect of the plaintiff's claim, or to the plaintiff in respect of the defendant's counterclaim: **25**  
Solicitor's fees

Provided that in no case shall the fee so taxable be less than \$1, and except as herein provided no other counsel or solicitor fee shall be taxable or payable between party and party.

**811.** There shall be paid to the clerk or deputy clerk and sheriff or deputy sheriff or sheriff's bailiff respectively for their services in actions and suits within the provisions of these Rules the fees prescribed by the tariffs of clerk's and sheriff's fees in "The Small Debt Tariff" contained in the schedule hereto. **26**  
Clerk and  
sheriff's fees

**27**  
Witnesses' and  
interpreters'  
fees

Costs of  
evidence

**28**  
General  
procedure  
may apply

**29**  
*Praecipe*  
and endorsement  
of process not  
necessary

**30**  
Informalities  
not to  
invalidate

**812.** Witnesses and interpreters in actions and suits within the provisions of these Rules shall be entitled to the fees and remuneration set forth in "The Small Debt Tariff" contained in the schedule hereto and such fees shall be taxable to or against the successful party:

Provided that the judge may in any case direct the taxation to either party of the reasonable costs and expenses of obtaining evidence by commission or otherwise.

**813.** Except as to the matters specially provided for in these Rules the general procedure and practice in the District Court (except the rules relating to examinations for discovery before trial) where not inconsistent herewith shall be adopted and applied in actions brought under these Rules.

**814.** It shall not be necessary upon the commencement of any proceeding or in the issue of any process in actions coming under the provisions of these Rules for any party to endorse upon any such process the name of the person by whom or on whose behalf the same was issued.

**815.** No proceedings under these Rules shall be deemed invalid for informality provided the same are in substantial compliance with the requirements of these Rules as to such proceedings.

## FORM H.

### SMALL DEBT PROCEDURE.—SUMMONS.

Canada  
Province of Alberta.

In the District Court in the District of.....  
BETWEEN:

of.....  
*Plaintiff,*

and

of.....  
*Defendant.*

To.....  
the above named defendant:

The plaintiff demands of you \$......as shown by his claim hereto attached or endorsed hereon. If the amount of the claim, with costs and fees as hereunder shown, and the amount of the service fees (if any) which may be ascertained from the person by whom this summons is served, or from the.....clerk of this court at.....be paid to the said.....clerk within.....days from the service of the summons on you, no further proceedings will be taken. If you dispute the claim or any part thereof you are to give to the.....clerk, within the above mentioned time or cause him to receive the same by mail within the said time, the dispute note hereto attached or one to the like effect, together with the sum of twenty-five cents for his fees, otherwise judgment may be signed against you by default for the plaintiff's claim and costs.



And take notice that in case you do so dispute the plaintiff's claim the cause will be tried at a sittings of this court held at.....  
A notice will be sent by mail addressed to you at the place shown on the dispute note as your proper address (if no address is given by you on the dispute note, then at your address as shown on the summons), giving you particulars of time and place of trial, which shall be at least twenty days after the mailing of such notice.

Dated at....., in the Province of Alberta,  
this.....day of....., A.D. 19....

(L.S.) .....

*By the Court.*

Claim .....\$.....  
Clerk's fees .....\$.....  
Service fees for postage if served by mail .....\$.....  
Solicitors' fees .....\$.....

.....  
*Clerk of the Court, or  
Process Issuer.*

NOTICE TO THE DEFENDANT.

If you dispute the plaintiff's claim your dispute should state whether you dispute the whole amount claimed or a part of it, and should set out the grounds of your dispute, and any cross-claims you have against the plaintiff or any defence you desire to set up based on the *Statute of Limitations* or other Statute. If you allege tender before action you must state in your dispute note that such tender was made, and when, and pay the amount tendered into court with your dispute note. In default of your filing a dispute note final judgment may be entered against you for the whole amount claimed, or in case of dispute of part of the claim, for such part as is not disputed and costs.

Take notice that on the day of the trial you should produce all the books and papers necessary to prove your case or in any connected with your transactions with the plaintiff.

Summonses for witnesses and for production of documents may be obtained at the office of the court mentioned in the within summons, upon payment of the proper fees.

The ensuing sittings of this court at.....will be held as follows, viz.:

At.....o'clock a.m., on.....the.....  
day of.....A.D. 19.....;  
At.....o'clock a.m., on.....the.....  
day of.....A.D. 19.....

FORM L.

*Rule 14.*

In the District Court of the District of.....  
BETWEEN:

.....  
*Plaintiff,*

and

.....  
*Defendant.*

Take notice that I dispute the plaintiff's claim on the following ground: .....

Dated at....., in the Province of Alberta,  
this.....day of.....A.D. 19.....

My post office address is.....

.....  
*Defendant.*

## RULES OF COURT

## FORM K.

## Rule 5.

## SMALL DEBT.—AFFIDAVIT OF SERVICE.

In the District Court of the District of.....  
BETWEEN:

.....  
Plaintiff,  
and  
.....  
Defendant.

I, ....., of.....  
in the Province of Alberta, ..... make oath and  
say:

1. That I did on..... the.....  
day of..... A.D. 19..... personally serve.....  
..... the above named defendant with a true copy of  
the summons herein hereunto annexed by delivering the said copy to  
and leaving the same with the said defendant at.....

2. That at the time of such service there was\*..... the said  
copy of summons so served a true copy of the particulars of claim\*  
..... upon the said annexed summons.

3. That at the time of such service there was also attached to the said  
copy of summons a blank form entitled in this cause of which the form  
marked "L" is a true copy.

4. That to effect such service I necessarily travelled.....  
miles.

Sworn to before me at....., in the Province  
of Alberta, this..... day of..... A.D. 19....  
A..... in and for the Province of Alberta.

\*Attached to or endorsed upon.

Where service is effected by registered mail clause 4 shall be omitted  
and the following substituted for clause 1:

1. That I did on....., the.....  
day of..... A.D. 19....., serve the defendant with  
a true copy of the summons herein hereunto annexed by enclosing such  
copy in an envelope addressed to the defendant at.....  
and posting the same by registered post in the post office at.....  
..... and hereunto annexed, marked "A", is the receipt from the  
postmaster at..... for such registered letter and  
hereunto annexed, marked "B", is the receipt of the defendant for such  
registered letter.

## SMALL DEBT TARIFF.

The following fees and no other shall be paid under the Small Debt  
Procedure Rules:

## CLERK'S FEES.

1. Receiving claim, numbering and entering in Procedure Book .....	\$ .25
2. Issuing summons .....	.50
3. Garnishee summons or writ of replevin, including examining affidavits .....	.50
4. Every original subpoena .....	.25
5. Every copy of claim, summons, garnishee or subpoena furnished by the clerk .....	.10
6. Receiving and entering dispute note .....	.25
7. Receiving payment of money into court without dispute note .....	.25
8. Every chambers summons or judge's order including entering .....	.25
9. Every commission to examine witnesses .....	.25

10. Entering every judgment by default, including search for dispute and taxation of costs and necessary filings.....	.25
11. Entering every judgment after trial or order for judgment, including appointment for taxation and taxation, if any..	.25
12. Every reference to the clerk, per hour actually engaged, including necessary appointments.....	.75
13. Every exemplification of judgment or every certificate.....	.25
14. Every writ of execution, or renewal thereof.....	.25
15. Copies of documents, per folio.....	.10

SHERIFF'S FEES.

1. For entry of every summons or process requiring service..	\$ .25
2. For service of every summons, subpoena or notice to witness or other document, including affidavit of service.....	.50
3. For return of all processes requiring service.....	.25
4. Enforcing every writ of execution, writ of replevin or attachment .....	1.00
5. Actual and necessary mileage travelled and sworn to from the place where the same is severally received, or the sheriff's office (whichever is nearer) to the place where service of any process paper or proceeding is made, or to execute any writ or other process or order, and return, per mile.. Where wrong address is given by plaintiff or his solicitor, and sheriff acts upon such information, and service is not effected by reason of the party to be served not being found at that address, or in the vicinity, and where mileage actually travelled under instructions from plaintiff or his solicitor, and no seizure made by reason of there being no goods liable to seizure, or by reason of wrong address given, actual expenses incurred, including mileage to be paid by the party in fault.	.20
6. Every schedule of property seized or replevied, including affidavit of appraisal, when necessary.....	1.00
7. Every bond, when necessary, when prepared by the sheriff, including affidavits of justification and of execution.....	1.00
8. Every notice of sale, not exceeding three, under execution or attachment .....	.25
9. Postage and correspondence.....	.25
10. Reasonable allowances and disbursements, necessarily incurred in the care and removal of property. (a) If a sheriff removes property seized, he is entitled to the necessary disbursements in addition to the fees for seizure and mileage. (b) If assistance is necessary in the seizure, or securing, or removal, or retaining of property, the bailiff is allowed for disbursements for such assistance.	
11. If execution or process in the nature of execution be satisfied whole or in part, after seizure and before sale, whether by action of the parties or otherwise, the sheriff shall be entitled to charge and receive three per cent. on the amount directed to be levied, or on the amount of the value of the property seized, whichever shall be the lesser amount.	
12. Poundage on executions and on attachments in the nature of executions, five per cent., exclusive of mileage for going to seize and sell, upon the amount realized from property necessarily sold.	

All charges for disbursements are to be submitted to the clerk for taxation, subject to appeal to the judge.

The sheriff must in all cases endorse a memorandum of all his charges on the back of the process, or state them on a separate slip of paper attached thereto, so that the clerk may conveniently tax the sheriff's charges for fees and disbursements. The clerk is in all cases to sign the memorandum of his taxation and preserve it among the papers in the cause, together with the process, for future references.



WITNESS FEES.

1. Attendance per day..... \$ 1.00
  2. Mileage, each way..... .10
- Where railway can conveniently be used witness shall only be allowed such sum as would be sufficient to pay railway fare in coming to and returning from place of trial, in no case to exceed mileage at above rate.

INTERPRETERS.

1. Per day employed..... 2.00

**RULES AS TO CASES STATED UNDER SECTION 761 OF  
"THE CRIMINAL CODE."**

**1**  
Application  
to J.P. to  
state and  
sign a case

**816.** An application to a justice of the peace to state and sign a case under said section 761 shall be in writing and be delivered to such justice or left with some person for him at his place of abode within seven days after the making of the conviction, order, determination or other proceeding questioned. Such application shall state the grounds upon which the proceeding is questioned, and whether the appeal is to be to the Appellate Division or to a judge.

**2**  
J.P. to state  
and sign case

**817.** Within fourteen days after such application has been so delivered or left for him the justice shall state and sign and deliver to the appellant, a case setting forth the facts of the case and the grounds on which the proceeding is questioned, stating—

- (a) The substance of the information or complaint;
- (b) The names of the prosecutor (or complainant) and defendant;
- (c) The date of the proceeding questioned;
- (d) A copy of the evidence (if any) in full as taken before the justice of the peace;
- (e) The substance of the conviction, order, determination or other proceeding questioned;
- (f) The grounds on which the same is questioned;
- (g) The grounds upon which the justice supports the proceeding questioned if the justice sees fit to state any.

Appellant to  
pay fees, etc.

(2) But the justice shall not deliver said case until after the appellant shall have entered into a recognizance and paid the fees as provided by section 762.

**3**  
Appeal in  
case of refusal

**818.** In the event of the justice declining or refusing to state a case, the appellant may apply to the court or judge for a rule as provided by section 764.

**4**  
Filing of  
stated case

**819.** Within twenty days after the delivery to the appellant of a case stated by a justice, the appellant shall file the same or cause it to be filed—

- (a) With the registrar of the court; or
- (b) If he desires the matter to be heard and determined by a judge in chambers with the clerk of the court at the place where the appeal is intended to be heard; provided that upon sufficient cause for the delay being shown the court or judge, as the case may be, may hear and determine the matter although the case was not delivered within said twenty days.

**820.** When the case stated has been delivered to the registrar the same shall, unless the court or a judge otherwise orders, be heard at the next sittings of the Appellate Division, which shall be not sooner than fourteen days after the delivery of the case stated to the registrar, and the appellant shall give to the respondent ten days' notice in writing of the time and place of hearing the appeal.

**5**  
Appeal, when  
heard by  
Appellate  
Division

**821.** When the case has been delivered to the clerk of the court, the appellant shall within five days after such delivery apply to the judge in chambers to fix a time and place for the hearing of the appeal, and the judge shall thereupon appoint a time and place for such hearing, and a copy of such appointment shall be served upon the respondent, or as the judge may direct; provided that if such application be not made within said period of five days, the judge may, upon sufficient cause for the delay being shown, fix such time and place notwithstanding that said period may have elapsed.

**6**  
Appeal, when  
heard by judge  
in chambers

**822.** The justice before or immediately after delivering a case stated to the appellant shall transmit the recognizance to the proper clerk of the court if the appeal is to a judge, or to the registrar if the appeal is to the Appellate Division.

**7**  
Recognizance

**823.** Slight deviation from strict compliance with these Rules shall not invalidate any proceeding or thing if the court or judge sees fit to allow the same, either with or without requiring the same to be corrected.

**8**  
Deviation  
from Rules not  
to invalidate  
proceedings

## CROWN PRACTICE

### Practice and Procedure of the Supreme Court in Relation to Mandamus, Certiorari, Habeas Corpus, Prohibition, and Quo Warranto Both in Criminal and Civil Matters and Costs in Such Matters.

#### QUASHING A CONVICTION, ORDER, ETC.

**824.** In all cases in which it is desired to move to quash a conviction, order, warrant or inquisition, the proceeding shall be by notice of motion in the first instance instead of by *certiorari* or by rule or by order *nisi*. [O. 1289.]

**1**  
Procedure  
to be by notice  
of motion

**2**  
Notice of  
motion,  
service and  
contents of

**825.** The notice of motion unless otherwise directed by a judge shall be served, at least seven days before the return day thereof, upon the magistrate, justice or justices making the conviction or order or issuing the warrant or the coroner making the inquisition, and also upon the prosecutor or informant, and upon the Attorney General, and upon the officer to whom, or upon the clerk of the office to which, the proceedings are required by law to be transmitted, and it shall specify the objections intended to be raised. [O. 1290.]

**3**  
Endorsement  
of notice

**826.** Upon the notice of motion shall be endorsed a notice in the following form addressed to the magistrate, justice or justices, coroner, or officer or clerk, as the case may be.

"You are hereby required forthwith after service hereof to return to the clerk of the Supreme Court at.....  
(*as the case may be*) the conviction (*or.....*  
*as the case may be*), herein referred to together with the information and evidence, if any, and all things touching the matter as fully and entirely as they remain in your custody, together with this notice.

"Date.....

"To A. B. magistrate at..... (*or as the case may be*).

"(Signed) C. D.....

*Solicitor for the Applicant."*

**4**  
Return of  
conviction,  
order, etc.

**827.** Upon receiving the notice so endorsed the magistrate, justice or justices, coroner, officer or clerk, shall return forthwith to the office mentioned therein the conviction, order, warrant or inquisition together with the information and evidence, if any, and all things touching the matter and the notice served upon him with a certificate endorsed thereon in the following form:

"Pursuant to the accompanying notice I herewith return to this honourable court the following papers and documents, that is to say—

"(1) The conviction (*or as the case may be*);

"(2) The information and the warrant issued thereon;

"(3) The evidence taken at the hearing;

"(4) (All other papers or documents touching the matter.)

Certificate of  
transmission

"And I hereby certify to this honourable court that I have above truly set forth all the papers and documents in my custody and power relating to the matter set forth in the said notice of motion."

(2) If the proceedings have been transmitted as required by law by the magistrate, justice or justices or coroner, to the proper officer he shall in lieu of the certificate above set out certify to the fact of such transmission together with the date thereof.

Return of  
certificate where  
proceedings  
not received

(3) If the proceedings have not been received by the officer to whom or the clerk of the office to which the same are by law required to be transmitted, such officer or clerk shall return a certificate of the fact in lieu of the certificate above set out.



(4) A copy of this Rule shall appear upon or be annexed to the notice of motion served upon the magistrate, justice or justices, coroner, clerk or officer from whom the return is required. [O. 1292.]

**828.** The certificate shall have the same effect as a return to a writ of *certiorari*. [O. 1293.]

**5**  
Certificate to have same effect as return to *certiorari*

**829.** The motion shall not be entertained unless the return day thereof be within six months after the conviction, order, warrant or inquisition and unless the applicant, if not the Attorney General, is shown to have deposited with the clerk of the court to whom the certificate is required to be returned as security for costs of the application the sum of \$25 or such other sum as a judge may direct.

**6**  
Return day to be within six months after conviction, etc.

(2) The requirements of this Rule as to security for costs shall also apply to motions for prohibition, *mandamus* or *quo warranto*.

Security for costs  
Security for costs on motion for prohibition, etc.

QUO WARRANTO.

**830.** No application in the nature of a *quo warranto* except an *ex officio* application shall be made without leave of a court or judge and unless at the time of application for such leave an affidavit be produced by which some person shall depose on oath that such application is made at his instance as relator; and such person shall be deemed to be the relator in case an order shall be made, and shall be named as such relator on such application. [N.S. 48.]

**7**  
*Quo warranto* requirements on application

**831.** Every objection intended to be made to the title of a defendant on an application in the nature of a *quo warranto* shall be specified in the notice of motion, and no objection not so specified shall be raised by the relator without the special leave of the court or a judge. [N.S. 49.]

**8**  
Specification of objections in notice of motion

**832.** The court or judge may refuse the application in the nature of a *quo warranto* with or without costs, and in its or his discretion may, upon such notice as may be just, direct the costs to be paid by the solicitor or other parties joining in the affidavits in support of the application, although not the relator. [N.S. 50.]

**9**  
Costs

**833.** A new relator may by leave of the court or a judge be substituted for the one first named on special circumstances being shown. [N.S. 51.]

**10**  
Substitution of relator

**834.** Where several applications in the nature of a *quo warranto* have been made against several persons for the usurpation of the same office and all upon the same or like grounds of objection, the court or a judge may order such applications to be consolidated, or may order all proceedings to be stayed upon all but one, until judgment be given in that one; provided always that no order be made to consolidate or stay any proceedings

**11**  
Several *quo warranto* applications

against any defendant unless he give an undertaking to disclaim if judgment be given for the Crown upon the application which proceeds. [N.S. 52.]

**12**  
Defendant  
may file  
disclaimer  
in an  
undefended  
application

**835.** If the defendant in an application in the nature of a *quo warranto* does not intend to defend, he may, to prevent judgment by default, file a disclaimer in the office of the clerk or deputy clerk of the court, as the case may be, and deliver a copy to the relator or his solicitor. Upon the disclaimer being filed judgment of ouster may be entered and the costs taxed as in judgment by default. [N.S. 53.]

#### MANDAMUS.

**13**  
*Mandamus*  
service of  
notice

**836.** The notice in the case of an application for *mandamus* shall be served upon every person who shall appear to be interested or likely to be affected by the proceedings. The court or a judge may direct notice to be given to any other person or persons and adjourn the hearing for that purpose.

**14**  
Unsuccessful  
defendant  
to pay costs

**837.** Any person whether he has been so served or not who can make it appear to the court or a judge that he is affected by the proceeding for *mandamus* may show cause against the application and shall be liable to costs in the discretion of the court or judge if the order should be made or the prosecutor obtain judgment. [N.S. 56.]

**15**  
Immunity for  
obeying a  
*mandamus*

**838.** No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a *mandamus* issued by the court or any judge thereof. [N.S. 65.]

**16**  
Affidavit in  
support of  
application

**839.** No order of *mandamus* shall be granted unless at the time of application an affidavit be produced by which some person shall depose upon oath that such application is made at his instance as prosecutor and the name of such person shall appear as the person at whose instance it is made. [N.S. 69.]

#### HABEAS CORPUS.

**17**  
*Habeas*  
*corpus*  
writ abolished

**840.** No writ of *habeas corpus* shall be necessary but an order may be made to the like effect, which order shall have the like consequences that the writ would have.

**18**  
Order for  
discharge  
of prisoner

**841.** On the argument of a motion for *habeas corpus* the court or a judge may in its or his discretion direct an order to be drawn up forthwith for the prisoner's discharge, which order shall be a sufficient warrant for any gaoler or constable, or other person, for his discharge.

#### GENERAL.

**19**  
Notice of  
motion, when  
returnable

**842.** The notice of motion for prohibition, *certiorari*, *quo warranto*, *mandamus* or *habeas corpus* shall be returnable before a judge of the Supreme Court or the Appellate Division. [O. 1294.]

**843.** When the motion is made to a judge an appeal shall lie from his order to the Appellate Division of the court by leave of the judge or of the Appellate Division, but subject to such right of appeal his decision shall be final. [O. 1297.] **20**  
Appeal

**843a.** In the event of an appeal from an order of discharge the judge from whose order the appeal is taken may, if he sees fit, stay the execution of the order pending the appeal, or may direct that before the discharge the prisoner enter into a proper recognizance to appear before the Appellate Division and submit to any order which may be made upon appeal.

**843b.** Any order or warrant required to give effect to any order of the Appellate Division may be made or directed by a single judge.

**844.** In all proceedings under these Crown Practice Rules the costs shall be in the discretion of the court or judge who shall have full power to order either the applicant or the party against whom the application is made, or any other party to the proceedings, to pay such costs or any part thereof according to the result. **21**  
Costs in discretion of judge

**845.** When costs are allowed the fees for all services shall be in the discretion of the taxing officer, not exceeding \$25; provided that the judge may, in his discretion, allow an increased fee in a proper case. **22**

**846.** Proceedings for attachment for contempt, for disobedience to any writ, judgment or order issued or made under these Rules shall lie and shall be the same as for disobedience to any writ, judgment or order in a civil action. **23**  
Attachment for contempt, etc.

**847.** When no other provision is made by these Rules the procedure and practice shall as far as may be, be regulated by the Crown Office Rules for the time being in force in England, and subject thereto and to these Rules the practice shall be the same as in civil proceedings in the Supreme Court. **24**  
Crown Office Rules when followed

FORMS.

**848.** The forms for the time being in use in England under the said Crown Office Rules where applicable, and where not applicable, forms of the like character as near as may be, shall be used in all proceedings except where otherwise ordered by these Rules. **25**  
Forms

IN APPEALS FROM SUMMARY CONVICTIONS, CASES STATED  
UNDER SECTION 761 OF THE CRIMINAL CODE, AND  
MATTERS UNDER THE CROWN PRACTICE RULES.

- |  |         |
|--|---------|
| 1. For receiving and entering.....   | \$ 2.00 |
| 2. Upon issue of subpoena, summons, rule, order or judgment,<br>or process to enforce or judgment..... | 1.00    |
| 3. For taxation of costs, including certificate if required.....                                       | 1.00    |



4. Every other certificate.....	.50
5. Every search .....	.25
6. Every appointment .....	.25
7. Copies of documents, when prepared in the office, in addition to fee for certificate if required, per folio.....	.10
8. Examining copies of instruments on file, when prepared by solicitor, in addition to fee for certificate if required, per folio .....	.05
9. Upon payment of money into court.....	.50

### RULES AS TO CONVEYANCE OF PRISONERS UNDER SENTENCE TO GAOL.

**1**  
Conveyance  
of prisoners  
to gaol

**849.** Whenever a person is sentenced to imprisonment in a common gaol in the Province of Alberta, by any court in such province, the sheriff or deputy sheriff of any judicial district in such province or any bailiff, constable or other officer, or other officer or other person by his direction, or by the direction of the court may, if no form of warrant is provided by The Criminal Code therefor, convey to the gaol named in the sentence any convict sentenced to be imprisoned therein and shall deliver him to the keeper thereof, without any further warrant than a copy of the sentence taken from the minutes of the court before which the convict was tried, and certified by a judge or the clerk or acting clerk of such court.

**2** **850.** The foregoing shall also apply where, according to the sentence imposed upon the convict, he is made liable to the punishment of death or whipping, or any other punishment.

**3** **851.** The keeper of the common gaol mentioned in such certified copy of sentence is authorized, and hereby required, to receive the convict mentioned in such certified copy of sentence into his custody in the said gaol, and he and the sheriff of the judicial district in which such gaol is situated, and all other persons and authorities whose duty it is to do so, are hereby authorized and required to carry out and execute the sentence mentioned in such certified copy of sentence, according to its tenor and effect.

### RULES AS TO CONTROVERTED MUNICIPAL ELECTIONS.

[The following Rules are promulgated under the authority of Section 41 of Chapter 117 of the Revised Statutes of Alberta, 1922.]

**1**  
Controverted  
municipal  
elections

**852.** The practice upon proceedings under *The Controverted Municipal Elections Act* where not provided for by the said Act shall be governed by the practice for similar proceedings in the District Court.

**853.** The costs to be allowed for such proceedings shall be those allowed for similar proceedings in the District Court in actions under \$400.

2

**854.** The following form or forms to the like effect shall be used:

3

FORMS.

I. TITLE.

All proceedings shall be intituled as follows:

"In the District Court of the district of.....

"In the matter of a Controverted Municipal Election.

"The King

on the relation of *A. B.*....., *Relator*

vs.

"*C.D.* (*the person whose relation is contested*), *Respondent.*"

II. RECOGNIZANCE.

(*Formal part as above.*)

WE, *A.B.* (*the relator*) and *E.F.* and *G.H.* (*the sureties*) acknowledge that we owe our Sovereign Lord the King, his heirs and successors, the following sums, viz.: I and the said *A.B.* the sum of \$200 and we the said *E.F.* and *G.H.* each the sum of \$100 of good and lawful current money of Canada upon the condition hereinafter stated:

Whereas the said *A.B.* has made application for leave to serve a notice of motion in the nature of a *quo warranto* upon *C.D.*, a member of the Municipal Council of..... to determine the right of the said *C.D.* to his seat as such member; If, therefore, the said *A.B.* do prosecute the said motion with effect and do pay to the said *C.D.* any costs which may be adjudged to him against the said *A.B.* then this recognizance to be void, otherwise to stand in full force and virtue.

Taken and acknowledged before me this..... day of.....19....

(*Judge or Commissioner, as the case may be.*)

III. AFFIDAVIT OF JUSTIFICATION.

I, *E.F.*, one of the sureties named in the foregoing (*or annexed, or as the case may be*) recognizance, make oath and say:

That I am possessed of property situate in the Province of Alberta which is not exempt from seizure under execution of the value of at least.....dollars over and above what will pay all my just debts and all other sums for which I am surety.

SWORN before me at the.....  
of.....  
in the Province of Alberta this.....  
.....day of.....  
19....  
A Commissioner, &c.

## RULES AND ORDERS UNDER THE WINDING-UP ACT.

## PETITION TO WIND UP COMPANY.

**1**  
Petition,  
title of

**855.** Every petition for the winding up of any company by the court, and all notices, affidavits and other proceedings under such petition shall be intituled "In the matter of the Winding-up Act," and of the company, naming the company, to which such petition relates.

**2**  
Notice of  
application  
and petition,  
service of

**856.** A copy of such petition endorsed with, or accompanied by, the notice of the application for the winding-up order required by the eighth section of said Act, shall be served at the principal or last known principal office or place of business of the company, if any such can be found, upon any member, officer or servant of the company there; or in case no such member, officer or servant can, after due diligence, be found there, then in the manner provided for service on a corporation of ordinary process or in such other manner as the court or a judge shall direct.

**3**  
Contents of  
notice.  
Copies of  
affidavits, etc.

**857.** The notice of the application shall mention the affidavits and other material upon which the applicant intends to rely in support of the application, and copies of such affidavits and other material, or of any portion thereof, shall be furnished by the solicitor of the petitioner, or by the petitioner if he shall present the same in person to the solicitor or any officer of the company requiring the same, within twenty-four hours after the demand therefor.

**4**  
Contributories,  
etc., entitled  
to copies of  
papers on  
payment of fee

**858.** Every contributory or creditor of the company shall be entitled to be furnished by the solicitor for the petitioner, or by the petitioner if he shall present the petition in person, with copies of the petition, affidavits, and material aforesaid, or of any portion thereof required, within twenty-four hours after the same shall have been by him demanded, on paying at the rate of ten cents per folio of one hundred words for each such copy.

**5**  
Endorsement  
of petition  
by solicitor

**859.** Upon every such petition and upon every copy thereof served, there shall be endorsed the name or firm and place of business of the solicitor by whom such petition is being presented; and when such solicitor is or are agents for another or other solicitor, then there shall be further endorsed on such petition and copies the name or firm and place of business of the principal advocate or advocates.

**6**  
Endorsement  
of address  
for service

**860.** Every party presenting such petition in person shall cause to be endorsed or written upon every such petition and copy his name and address, and also when his place of residence is not in the place where the clerk's office is kept, another address in the place where the clerk's office is kept to be called his address for service, at which address notices, orders, summonses, warrants, and other documents, proceedings and written communications may be left for him.



**861.** Every such petition, and the affidavits and other material intended to be used in support thereof, shall, on or before the day of service of notice of the application for a winding-up order, be filed in the office of the clerk of the court of the judicial district in which the head office of the company is situate, and unless so filed such petition, affidavits or material shall not be read or used upon the application without special leave of the court or a judge.

**7**

Filing  
petition and  
affidavits

**862.** Such petition shall be presented before the presiding judge in chambers, and the application may then be heard and determined by him, or adjourned to another day or time to be heard in chambers or before the court, as he or any other judge, before whom the same shall come in chambers, shall direct.

**8**

Disposition  
by judge in  
chambers

LIQUIDATORS.

**863.** If the petitioner shall desire to have a liquidator appointed upon the first presentation of the petition without any adjournment, or to have a provisional liquidator then appointed, he shall in the notice of his application mention the name of the liquidator or provisional liquidator sought to be appointed, and he shall also in such case as soon as possible after the filing of his petition, apply to a judge for directions as to the mode of service of notice of the application for the appointment of a liquidator or provisional liquidator and the parties to be served with such notice.

**9**

Application for  
appointment  
of liquidator

**864.** If it shall appear to the judge in chambers, upon the first presentation of the petition that all proper parties have had sufficient notice, the judge may then make the order for winding up the company with the appointment of a liquidator; if not, the application shall be then adjourned for such time as the judge shall think proper, and notice of the name of the party sought to be appointed liquidator and of the time to which the application is adjourned shall be given to such or such other parties, and in such manner as to the judge shall seem proper pursuant to the twentieth section of said Act.

**10**

Winding up  
order

Adjournment  
of application

**865.** To enable the judge to determine what shall be the most satisfactory method of giving notice of the application to appoint a liquidator, and the parties to whom such notice should be given, the petitioner shall, in applying to a judge for directions respecting such service, furnish to the judge the best evidence obtainable by him, on reasonable inquiry, to the satisfaction of the judge, as to the numbers of the creditors, contributors and shareholders respectively, and their places of residence, and the judge may require such further evidence on these or other points to be furnished as he shall think important for the purpose.

**11**

Evidence to  
be furnished  
judge on  
applying for  
directions for  
service of  
notice

**866.** The notice of the application for the appointment of a liquidator shall show that the application is to be for the appointment of a person (giving his name, address and occupa-

**12**

Contents of  
notice

tion) therein named, or such other person as the court or judge shall think fit to appoint, and upon the application the court or judge may appoint the person named in the notice, or any other person with or without further notice to any person, as may seem proper.

**13**  
Evidence of  
qualifications  
of liquidator

**867.** The application for the appointment of a liquidator shall be accompanied by satisfactory evidence of the qualifications and character of the party sought to be appointed as liquidator and of his fitness for the office.

**14**  
Appointment of  
provisional  
liquidator

**868.** A provisional liquidator may be appointed at any time after the filing of the petition and before the first appointment of a liquidator, and either before or after the application for winding up the company shall have first been made in chambers. Such appointment may be made with or without notice, as to the judge from whom the appointment is asked shall seem proper, and such provisional liquidator shall not be required to give security unless such shall be specially ordered upon or after his appointment.

**15**  
Sureties of  
liquidator

**869.** The liquidator shall, on each occasion of passing his account, and also whenever the court or a judge shall so require, satisfy the court or judge that his sureties are living and resident in Alberta, and have not become insolvent; and in default thereof he may be required to enter into fresh security within such time as shall be directed.

**16**  
Death, etc.,  
of liquidator

**870.** In case of the death, removal or resignation of a liquidator, another or others shall be appointed in his stead, as in the case of a first appointment, and the proceedings for the purpose may be taken by such party interested as may be authorized by the court or a judge to take the same.

**17**  
Duties of  
liquidator

**871.** The liquidator shall, with all convenient speed, after he is appointed, proceed to make up, continue, complete and rectify the books of account of the company, and shall provide and keep such books of account as shall be necessary, or as the court or a judge may direct for the purpose aforesaid, and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made under said Act.

**18**  
Accounts of  
liquidator

**872.** The accounts of the liquidator shall be filed in the office of the clerk of the court, at such time as may from time to time be required by the court or a judge, and such accounts shall, whenever required by the court or a judge, and upon notice to such parties (if any) as the court or a judge shall direct, be passed and verified in the same manner as receivers' accounts.



PROCEEDINGS UNDER WINDING-UP ORDER.

**873.** Within ten days after the issue of the winding-up order, or such further time as the court or a judge shall direct, an appointment shall be obtained from a judge to proceed with the winding up of the company, and notice thereof served upon all persons who may have appeared upon the hearing of the petition, and upon such other persons (if any) as the judge shall direct; in default of the petitioner so proceeding to obtain such appointment, the court or a judge may, if it shall seem proper, give the carriage and prosecution of the winding up to any other person interested. **19**  
Appointment to proceed and notice thereof

(2) This Rule shall apply to cases in which winding-up orders have already been made under said Act, in respect of which the period of ten days fixed for taking out the appointment shall be computed from the time when these Rules take effect and come into operation. Rule to apply to orders already made

**874.** At the time thus appointed, a time or times shall, if the judge thinks fit, be fixed for the proof of debts, for the list of contributories to be brought in, for the liquidator to file his accounts, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, when necessary, by further appointment, and any such direction as aforesaid may be given, added to or varied, at any subsequent time, as may be found necessary. **20**  
Time for proof of debts, etc.

PROOF OF DEBTS.

**875.** For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the judge shall direct. Such advertisements shall fix a time for the creditors to send in their names and addresses, and the particulars of their debts or claims, the nature and amount of the security (if any) held by them respectively, with the valuation thereof on oath, required by the sixty-second section of the said Act, and the names and addresses of their solicitors (if any) to the liquidator, and appoint a day for adjudicating thereon. **21**  
Advertisement for debts, etc.

**876.** The creditors need not attend the adjudication or prove their debts or claims unless they are required to do so by notice from the liquidator or from any creditor, contributory, shareholder or member of the company; but upon such notice being given they are to come in and prove their debts or claims at the time therein specified, or such other time as the court or judge may allow. **22**  
Creditors need not prove claims unless required by notice

**877.** The liquidator shall investigate the debts and claims sent in to him, and ascertain, so far as he is able, which of such debts and claims are justly due from the company; and he shall make out and leave with the clerk of the court a list of all the **23**  
Duties of liquidator as to debts and claims



debts and claims sent to him, distinguishing which of the debts and claims or parts of debts and claims so claimed, are in his opinion justly due and proper to be allowed without further evidence, and which of them in his opinion ought to be proved by the creditors; and he shall make and file with the said clerk, prior to the time appointed for adjudication, an affidavit setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed and the reasons for such belief.

**24**

Judge may  
allow debts,  
etc.

**878.** At the time appointed for adjudicating upon the debts or claims, or at any adjournment thereof, the judge may either allow the debts and claims upon the affidavit of the liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed.

**25**

Notice to  
creditors  
whose debts  
not allowed  
on affidavit

**879.** The liquidator shall give notice to the creditors whose debts or claims have not been allowed upon the affidavit, that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement or by adjournment, or other appointment, as the case may be, for adjudicating upon such debts or claims.

**26**

Debts to  
be estimated  
according to  
value at  
commencement  
of proceedings

**880.** The value of such debts and claims as are made admissible to proof by the said Act shall, so far as is possible, be estimated according to the value thereof at the commencement of the proceedings for winding up the company.

**27**

Costs of proof  
of claims

**881.** Such creditors as come in and prove their debts or claims pursuant to notice may be allowed their costs of proof, and in any case a creditor seeking to prove a claim may be ordered to pay costs.

**28**

Deposit of  
papers with  
clerk

Service of  
notice of  
hearing

**882.** The liquidator shall deposit with the clerk of the court the papers to be transmitted to the court under the said Act. Notice of the time and place fixed for hearing and determining the contestation shall be served upon the opposite party, and such other parties as the judge shall direct, at least four days before the day so fixed.

**29**

Claims on  
books of which  
liquidator has  
not notice

**883.** If by examination of the books, accounts or papers of the company, or by any other means, the liquidator is led to believe that any person is a creditor of, or has a claim against, the company, for which such party is entitled to rank upon the assets of the company, and such party shall not have sent in to the liquidator notice of his claim, the liquidator shall mention such claim and the probable amount thereof, according to the best information he shall have been able to obtain, in the affidavit required by Rule 23, with the address, or supposed address, of such person, if the liquidator shall be able to give the same.

**884.** On the making of any dividend, except one declared as a final dividend, unless the court or a judge shall otherwise order, there shall be reserved for each such person shown in such affidavit to be supposed to be a creditor of, or to have a claim against, the company as aforesaid, and not to have sent to the liquidator notice of his claim, an amount proportionate to his said claim, and a copy of the dividend sheet, showing the amount so reserved, shall be mailed to such person, as well as to the creditors whose claims shall have been duly allowed. Any amounts retained may, by leave of the court or a judge, upon the declaration of a subsequent dividend, be included in the sum divided among those whose claims shall have been duly allowed, without any further reservation for any person not having given such notice.

**30**

Reservation of dividend, etc., where liquidator has no notice of claims

**885.** Any person giving notice, after the declaration of a dividend, of a claim to rank as one of the creditors of, or as having a claim against, the company, shall be compelled to make proof of his claim before the court or a judge. Such proof shall, unless otherwise ordered, be made at the expense of the party making such claim. Any such party for whom a sum has been so reserved as aforesaid, and whose claim shall have been allowed, shall be collocated upon the next dividend sheet, after the allowance of his claim for the proper amounts of previous dividend so reserved, proportionately to the amount at which his claim shall have been allowed.

**31**

Proof of claims made subsequent to declaration of dividend

LIST OF CONTRIBUTORIES.

**886.** The liquidator shall, with all convenient speed, after his appointment, or at such time as the court or judge shall direct, make out and leave with the clerk of the court a list of the contributories of the company. Such list shall be verified by the affidavit of the liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories, and such list may, from time to time, by leave of the court or a judge, be varied or added to by the liquidator.

**32**

List of contributories

**887.** Upon such list of contributories being so left, the liquidator shall obtain an appointment to settle the same, and shall give notice in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares or interest, such person is included in the list; and in case any variation or addition to such list shall at any time be made by the liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies.

**33**

Appointment to settle list, notice of

**888.** All such notices shall be served four days before the date appointed to settle such list, or such variation or addition.

**34**

Service of notice



## CALLS.

**35**

Application  
to make call  
on notice of  
motion

**889.** Every application to the court or a judge to make any call on the contributories, or any of them, shall be made upon notice of motion, stating the proposed amount of such call; such notice of motion shall be served four days at least before the day appointed for making the call, on every contributory proposed to be included in such call; and upon the copy so served on each contributory shall be written or printed a memorandum specifying the amount which such contributory will be required to pay, upon the basis of the call proposed.

Service of  
contributories

Memo. of  
amount

**36**

Contents of  
order for call

**890.** An order for a call may be made so as to direct payment not merely of the amount of the call, but also of the amounts or balances payable by the respective contributories, or by such of them as may seem proper, and the time and place of payment; provided that no contributory shall be thus ordered to pay a larger sum than specified in the memorandum upon the notice of motion, without notice to him or his solicitor that a larger sum is to be paid by him; but the court or judge may, upon such notice as may seem just, or, if the party appear, then without further notice, cause the memorandum to be amended so as to increase the amount or otherwise, and may direct the liquidator or other party having the conduct of the summons or order *nisi*, to pay any additional costs to be thus incurred, and may make such other terms or conditions as may seem proper.

**37**

Notice of  
intended call

**891.** If the court or a judge shall so direct, notice of the intended call may be given by advertisement, and no further notice of the application need then be given to any contributory unless the court or a judge shall so order. When notice of the intended call is given by advertisement no notice need be given of the particular amount to be required of each contributory; and in any case the memorandum specified in Rule 35 may be dispensed with.

**38**

Order where  
memo. not  
served

**892.** Unless for special reasons it shall seem just and proper, where the memorandum specified in Rule 35 is not served either by advertisement or otherwise, the order shall specify merely the amount of the call to be made, and shall not direct payment of specific sums by the respective contributories.

**39**

Service of  
order and  
notice of  
amount due

**893.** A copy of an order for a call shall be forthwith served upon each of the contributories included in such call; and upon each contributory so included not directed by the order itself to pay a specific sum in respect of such call, there shall be served, with the order, a notice from the liquidator, or other party having the conduct of the proceedings for a call, specifying the amount or balance due from such contributory (having regard to the provisions of the said Act and any amendments thereof), in respect of such call; but an order for a call need not be advertised, unless for any special reason the court or a judge shall so direct.

Order need  
not be  
advertised  
unless directed



**894.** At the time of the making of an order for a call, if the order shall not specify the particular sum payable by each contributory included in the call, or if the court or a judge shall otherwise deem it proper, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary. At the time appointed by any such adjournment, or upon a motion to enforce payment of the call, and upon proof of the service of the order and notice of the amount due, required by Rule 39 and non-payment thereof, an order may be made for such of the contributories who have made default, or for such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively; and any order may be made that shall seem just and proper for payment by such contributories or any of them, of the costs of such adjournment or further application and order, or of any portion thereof.

**40**  
Adjournment  
of call  
proceedings

**895.** In any case in which the liquidator or other party having the conduct of an application for or in respect of a call at any stage, shall have adopted a more expensive method of enforcing such calls than he might under these Rules have adopted, in any respect, such liquidator or other party may be ordered to pay the additional costs so incurred, if the same shall not be ordered to be paid by, or if so ordered shall not have been realized from, any contributory or party.

**41**  
Payment of  
additional  
costs

**896.** Any contributory may deposit with the clerk of the court a receipt or acknowledgment of the bank into which an amount is payable by him in respect of a call, or of the proper officer of the court, where the same is payable into court, or of the party authorized by the order to receive such payment, which receipt or acknowledgment shall show the amount so paid in respect of such call.

**42**  
Receipt of  
bank for  
amount of call

**897.** Where a contributory is, by the order for a call or by a subsequent order, directed to pay a specific amount in respect of a call, then at the expiration of the time for payment, if no such receipt shall have been so deposited with the clerk of the court, or if the receipt or acknowledgment deposited shall not show the proper amount to have been paid, executions may without further order be issued by the clerk of the court, for realizing the amount so ordered, or the deficiency (if any) appearing by such receipt or acknowledgment, and with this may be included any sum for taxed costs where the same can be conveniently included according to the usual practice.

**43**  
Issue of  
execution on  
non-payment  
of call

PROCEEDINGS BEFORE A JUDGE.

**898.** Any application to a judge for any purpose under the winding-up order shall be made to him in chambers unless the court or a judge shall in the particular matter otherwise direct.

**44**  
Application to  
be made in  
chambers

All such applications in chambers shall, unless the case be a proper one for an *ex parte* order, be made upon notice or appointment of the judge in writing; but the court or a judge may require any application to be made upon petition. An order shall be drawn up in every case unless otherwise directed.

45

Affidavit in support of application for sanction of compromise, etc.

**899.** Every application for the sanction of the court or a judge to a compromise or other arrangement with any contributory or other person indebted or liable to the company, or with creditors or persons claiming to be creditors of the company, shall be supported by the affidavit of the liquidator that he believes that the proposed compromise will be beneficial to the company and the reasons for such belief, and showing (where the state of affairs of such contributory or other person is one of such reasons), that the liquidator has investigated the affairs of such contributory or other person, and the result of such investigation. The facts supporting such reasons for the liquidator's belief shall, as far as conveniently practicable, be proved, and upon the application such further evidence may be required as may to the court or judge appear proper.

46

Sanction to be testified by memo. of clerk

**900.** The sanction of the court or judge under the last preceding Rule shall be testified by a memorandum signed by the clerk on the agreement of compromise or arrangement, unless any party shall desire to appeal from the decision of the court or judge, in which case an order shall be drawn up and issued for that purpose.

#### ORDERS.

47

Signing and entry of orders

**901.** All orders made in chambers shall be signed by the judge, as orders made in actions at law, and all orders before being delivered out, shall be entered at length in a book to be kept for that purpose by the clerk of the court, unless in cases of urgency the court or a judge shall otherwise direct, in which case the order shall as soon as possible be left with the clerk to be entered, or a duplicate order shall be issued, as may be directed.

#### ADVERTISEMENTS.

48

Advertisements

**902.** Where an advertisement is required for any purpose, the same is to be published only in such newspaper or other publication, and for such number of times, as may be specially provided by these Rules, or by order of the court or a judge.

#### ADMISSION OF DOCUMENTS.

49

Admission of documents

**903.** Any party to any proceeding in court or in chambers, under said Act, may, by notice in writing in the form required in suits at law, or to the like effect, with such changes as the nature of the circumstances may require, call on any other party thereto competent to admit the same, to admit any document, saving all just exceptions, or to admit that a copy of a document duly registered or filed in any land titles office, or



filed under any ordinance respecting mortgages and sales of personal property, or respecting lien or receipt notes or orders for chattels, duly certified by the registrar or officer in charge of the office where the same is registered or filed, or his deputy, to be a true copy of the original document so registered or filed, is a true copy of such original document and sufficient evidence of the due execution of the original, and that the same was registered or filed in the office stated in such certificate at the time therein stated. In case of any refusal or neglect so to admit, the costs of proving such document, or the registration or filing of the same, shall be paid by the party so neglecting or refusing, unless a judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document, or the registration or filing thereof, where any portion of the Rule is applicable, shall be allowed, unless such notice shall have been given, except in cases where the omission to give such notice has been in the opinion of the taxing master (subject to appeal) a saving of expense.

REGISTER AND FILE OF PROCEEDINGS.

**904.** The clerk of the court shall attend before the court or judge upon such proceeding, and shall keep a register of all proceedings in chambers or in court in each matter under this Act; except on an appeal or other matter before the full court, when the registrar of the court, or some one appointed by him or the court, shall attend and keep a register of such proceeding with, and in the same manner as in other matters before the full court. **50**  
Register of  
proceedings

**905.** All documents or proceedings required to be deposited or filed in court, shall be deposited or filed with the clerk of the court in whose office the petition has been filed, except on appeals to the full court, when documents and proceedings connected therewith shall be filed with the registrar. **51**  
Deposit and  
filing of  
documents

**906.** All orders, exhibits, admissions, memorandums and all other documents relating to the winding up of any company, not required by these Rules or the usual practice, or the special direction of the court or a judge, to be filed in court, shall be filed and kept by the liquidator in his own office, and shall be produced in court or before a judge, and otherwise, as may be required. Upon the termination of the winding-up proceedings, all such documents, and all minute and account books referring to the company's affairs shall be deposited with the clerk, unless or until it shall be otherwise ordered by the court or a judge. **52**  
Custody of  
documents  
not filed

**907.** Every contributory of the company, and every creditor thereof, whose debt or claim has been allowed, shall be entitled at all reasonable times to inspect such documents as are filed or deposited with the liquidator, clerk of the court, or registrar, in reference to proceedings under said Act, free of charge, and to take copies thereof, or extracts therefrom at his own expense, **53**  
Inspection of  
documents



not removing the same from the office where the same are filed or deposited, or to be furnished with any such copies or extracts on paying therefor at a rate not exceeding five cents per folio of one hundred words.

#### PROVISIONAL LIQUIDATOR.

**54**  
Rules to  
apply to  
provisional  
liquidators

**908.** All rules relating to liquidators shall, so far as the same are applicable, and subject to the directions of the court or a judge in each case, apply to provisional liquidators.

#### ATTENDANCE AND APPEARANCE OF PARTIES.

**55**  
Attendance and  
appearance  
of parties

**909.** Every person for the time being on the list of contributories left by the liquidator with the clerk of the court, and every person having a debt or claim against the company, allowed by the judge, shall be at liberty, at his own expense, to attend the proceedings in reference to the winding up of the company, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the court or judge before whom any proceeding is taken shall be of opinion that the attendance of any such person upon any such proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, such person may be directed to pay such costs or a gross sum in lieu thereof; and such person shall not be entitled to attend any further proceedings until he shall have paid the same, and the liquidator shall have the right to take for collection of the same any proceedings which might be taken for the collection of any costs awarded by any order of the court or a judge.

**56**  
Appointment  
of representative  
of class

**910.** The court or a judge may from time to time appoint any one or more of the contributories or creditors, as he thinks fit, to represent before him, at the expense of the company or otherwise as shall seem proper, all or any class of the contributories or creditors, upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before him relating to the winding-up of the company and may remove the person or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them. No costs shall be allowed against the company to any such person in respect of any proceedings, unless he shall have been specially requested by the judge to attend on such proceeding.

**57**  
Conditions of  
attendance at  
proceedings in  
chambers

**911.** No contributory or creditor shall be entitled to attend any proceedings at the chambers of the judge, unless and until he has entered in a book to be kept for that purpose by the clerk of the court, his name and address, and the name and address of his solicitor (if any), and upon any change of his address, or of his solicitor, his new address, and the name and address of his new solicitor.

SERVICE OF SUMMONS, NOTICES, ETC.

**912.** Service upon contributories or creditors shall be effected, except when personal or other service is specifically required, by sending the notice, or a copy of the summons or order or other proceeding, through the post, in a prepaid registered letter, addressed to the solicitor of the party to be served (if any), or otherwise to the party himself at the address entered or last entered pursuant to the last preceding Rule; or if no such entry has been made, then if a contributory, to his last known address or place of abode, and if a creditor to the address given by him pursuant to the foregoing Rule 21, and such notice or copy of summons, order or other proceeding, shall be considered as served, at the time the same ought to be delivered in the due course of delivery by the post office, and notwithstanding the same may be returned by the post office; the judge shall not be obliged to receive proof on oath of such time, but may act on his own knowledge of the course of the mails, or such information as he may think reliable.

**58**

Service by post sufficient unless otherwise specifically required

**913.** No service under these Rules shall be deemed invalid by reason that the Christian name, or any of the Christian names, of the person upon whom service is sought to be made, has been omitted or designated by initial letters, in the list of contributories or creditors, or in the summons, order, notice or other document wherein the name of such contributory or creditor is contained, provided the court or judge is satisfied that such service is in other respects sufficient.

**59**

Omission of Christian name, etc., not to invalidate service

SOLICITOR OF LIQUIDATOR.

**914.** The solicitor of the liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the court; and where attendance is required on any proceeding in court or chambers the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the court or a judge shall direct him to attend.

**60**

Solicitor to conduct proceedings etc.

FORMS.

**915.** Until other forms are directed, the forms in use in winding-up proceedings in England, with such variations as may be necessary to adapt them to the practice under these Rules and the said Act, and as the circumstances of each case may require, may be used.

**61**

Forms

**916.** When a winding-up order has been made the court or a judge may refer and delegate to the master or an officer of the court any of the powers conferred upon the court.

**62**

Delegation of powers of court

COSTS.

**917.** The fees allowed to solicitors, counsel, clerks, sheriffs, and the registrar, in proceedings under said Act shall so far as applicable and unless otherwise directed by the court or a judge, be those authorized under schedules C and E of the Rules as to Costs.

**63**

Fees

**64**  
Taxation  
by clerk

**918.** Where an order is made in court or in chambers for payment of any costs, unless otherwise directed, the same shall be taxed by the clerk, subject to appeal from such taxation as in ordinary proceedings in the Supreme Court.

#### COMPUTATION OF TIME.

**65**  
Computation  
of time

**919.** In the computation of time, under these Rules, or under any notice, summons or order, made or given under the provisions hereof, unless otherwise specially mentioned, the same shall be reckoned exclusively of the first day and inclusively of the last day.

#### POWER OF JUDGE.

**66**  
Power of judge  
to enlarge or  
abridge time

**920.** The power of the court, or of a judge in chambers, to enlarge or abridge the time for doing any such act, or taxing any proceeding, to adjourn or review any proceeding and to give any direction as to the course of proceeding, is unaffected by these Rules.

#### GENERAL DIRECTIONS.

**67**  
General  
practice  
to apply

**921.** The general practice of the court, including the course of proceeding and practice in judge's chambers, shall in cases not provided for by said Act and amendments thereto, or these Rules, and so far as the same are applicable and not inconsistent with the said Acts or these Rules, apply to all proceedings for winding up a company.

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### RULES RELATING TO APPLICATIONS FOR AND GRANT OF LETTERS OF ADMINISTRATION, PROBATE AND GUARDIANSHIP.

#### INTERPRETATION.

**1**  
Interpretation

**922.** Where the following words and expressions occur in these Rules or forms, they shall be construed in the manner hereinafter mentioned unless a contrary intention appears:

- (a) "Will" shall include all testamentary instruments and writings of which probate may now be granted;
- (b) "Administration" shall include all letters of administration of the effects of deceased persons whether with or without the will annexed and whether granted for general, special or limited purposes;
- (c) "Application" and "grant" shall mean respectively an application for and a grant of probate, letters of administration with or without the will annexed, and letters of guardianship as the case may be (and shall include resealing);
- (d) The expression "judge" or "the judge" shall mean a judge of a District Court;



- (e) "District" shall mean "judicial district";
- (f) "Non-contentious business" shall mean the business of obtaining probate, administration or guardianship where there is no contention as to the right thereto, including the granting of probates and administration through a District Court when the contest is terminated, and all business of a non-contentious nature to be taken in a District Court in matters of testacy and intestacy not being proceedings in any suit, and also the business of lodging caveats against the grant of probate of administration;
- (g) "Contentious business."—A proceeding or matter shall be adjudged contentious when there are conflicting claims as to the right to obtain or retain a grant and where proceedings in respect of such claims are taken by one person against another;
- (h) "Issuing" shall include delivering.

JUDGE MAY SIT AT ANY TIME.

**923.** Subject to Rules of Court a judge shall have power to sit and act at any time for the transaction of business in probate, administration and guardianship matters. **2**  
Judge may sit at any time

NON-CONTENTIOUS BUSINESS.

**924.** Every application for probate or administration shall be made to the court of the district in which the deceased was residing at the time of his death or in case he was residing outside the province to the court of any district within which he had at his death any property. Applications for the appointment of guardians shall be made to the court of the district within which the infants reside or of the district within which property belonging to the infants is situate. **3**  
Application for probate, etc.

(2) The clerk of the court shall forthwith give notice to the Deputy Attorney General of every application filed in his office for a grant of administration, probate or guardianship.

(3) No grant shall issue upon any application for administration, probate or guardianship until the receipt by the clerk of a certificate from the Deputy Attorney General that no notice of any other application for grant has been received by him with respect to the same estate, that no caveat or copy of caveat has been filed with him and that he has not received notice that any will of the deceased was deposited by him in his lifetime for safekeeping in the office of any clerk of the court, except upon the order of a judge, or the withdrawal or expiry of any caveat, which has been filed with respect to such grant.

(4) Notice of the issue of every grant shall forthwith be sent by the clerk of the court to the Deputy Attorney General.

**925.** Every application for probate, administration or guardianship shall be in form 1 in schedule 1 hereto, or to the like effect, and shall show whether the same is made by the **4**  
Form of application

applicant in person or by his solicitor, the capacity in which he applies, and the addresses of both the applicant and his solicitor, if any, shall appear thereon.

**5**  
Time of issue of  
administration  
and probate

**926.** Unless by direction of the judge no probate, or letters of administration with the will annexed shall issue until after the lapse of seven days from the death of the deceased, and no administration shall issue until after the lapse of fourteen days from the death of the deceased.

**6**  
What application  
for administration  
of intestate  
to show

**927.** Every application for administration to an intestate's estate shall be accompanied by the administrator's oath and bond, by all necessary renunciations and by an affidavit or affidavits showing—

- (a) Full name and occupation of deceased;
- (b) The place and date of death;
- (c) The permanent residence of the deceased at date of death, and the places at which he resided for six years next preceding his death so far as can be ascertained;
- (d) Age of deceased; and status of deceased, *i.e.*, whether leaving a wife or husband, or dying a bachelor, widower, spinster or widow;
- (e) Relationship of applicant to deceased, explaining reasons why the application is not made by husband, widow, child or nearer relative than applicant, if any, and if not, stating the fact;
- (f) That the applicant is of the full age of twenty-one years;
- (g) Search for will;
- (h) Particulars, valuation and location of property in respect of which application is made;
- (i) That to the best of the applicant's knowledge, information and belief no other application for a grant has been made;
- (j) An undertaking to surrender the grant to the court if so required by the court or a judge.

**7**  
What application  
for administration  
with will  
annexed to show

**928.** Every application for administration with the will annexed shall be accompanied by the administrator's oath and bond and by an affidavit or affidavits giving the same information as in the case of applications for administration to an intestate's estate except search for will but showing—

- (a) Identification of will;
- (b) Execution of will;
- (c) The persons in whose possession the will has been, and its condition on every change of possession since execution, unless dispensed with by the judge;
- (d) That the testator did not intermarry with any person since the execution of the will;
- (e) That the testator was of the full age of twenty-one years at the date when he made his will;

(f) Renunciation when necessary;  
and explaining why the application is not made by the executor, if any, and where the application is made by a beneficiary, stating the fact, and, if the applicant is not the residuary legatee, why the application is not made by such legatee;

(g) An undertaking to surrender the grant to the court if so required by the court or a judge.

**929.** Every application for probate shall be accompanied by the executor's oath and by an affidavit or affidavits showing all the facts required to be shown on an application for administration with will annexed, except the relationship to deceased of the applicant, or interest under the will (unless such relationship is stated in the will). **8**  
What application  
for probate  
to show

**929a.** It shall be the duty of the person applying for probate or letters of administration with will annexed of the estate of any person leaving him surviving a widow resident within the province, where such widow is entitled to make application for relief under *The Widows' Relief Act*, to satisfy the District Court judge before such letters do issue that such widow is fully aware of her rights, under the said Act, and before letters be issued the judge may direct that a copy of the said Act be forwarded by registered post to such widow, and may delay the issue of probate and letters of administration until such time as in the opinion of the judge such widow will have in due course become informed of her rights under the said Act.

**930.** Every application for letters of guardianship shall be accompanied by the applicant's bond and affidavit as to the execution of the trust, the consent of such of the infants as are fourteen years of age or over, and an affidavit or affidavits showing— **9**  
What  
application for  
guardianship  
to show

- (a) Date and place of death and of abode of parents or parents of infants;
- (b) Names, ages (with dates of birth) and places of abode of infants;
- (c) Relationship of applicant to the infants and that he is of the full age of twenty-one years;
- (d) Particulars, valuation and location of real and personal property of infants and the annual value of the same;
- (e) Eligibility and fitness of applicant and proof of notice by publication under Rule 13, where publication is required by the judge;
- (f) An undertaking to surrender the grant to the court if so required by the court or a judge.

**931.** Special and limited grants of administration such as have been made in England prior to the, or under any, statutory provision of the Province of Alberta may continue to be made with such limitations, upon such evidence and under such **10**  
Special  
and limited  
administration



conditions as may seem expedient. Any such limitations and conditions shall clearly appear in the grant and in the oath of the administrator.

**11**  
Administration  
limited to  
personal estate

**932.** A person entitled to take out letters of administration shall be entitled to take out such letters limited to the personal estate of the deceased, exclusive of the real estate, but where limited administrations are applied for it must be made to appear that every person entitled in distribution to the property has consented or renounced or has been cited and failed to appear except when the judge sees fit otherwise specially to direct.

**12**  
Will, how  
marked

**933.** Every will in respect of which probate or administration is granted shall be marked by the judge, by the executor or administrator and by one of the witnesses thereto when possible and by the person before whom they are respectively sworn. It shall not be marked on a sheet on which no part of the will is written, even though such sheet is annexed to the will.

**13**  
Notice of  
guardianship  
application

**934.** In any case in which the judge shall deem it advisable, notice of an application for letters of guardianship shall be published in such manner as he may direct.

**14**  
Bond and  
sureties

**935.** Every person to whom a grant of administration or of guardianship is made and every foreign executor shall give a bond with at least two sureties in double the value of the property, unless the court, which it may do, direct the same to be reduced, and the sureties shall together justify to the full amount of such bond; provided that where the property is of small value or the applicant is solely entitled thereto and it appears that no bond is required for the protection of creditors, the judge may accept a bond with only one surety or may dispense with such bond; and provided also that the bond of a guarantee company approved of by the Lieutenant Governor in Council may be accepted in lieu of a bond with sureties. The execution of every bond, except that of a guarantee company, shall be verified by the affidavit of the subscribing witness who shall *inter alia* depose to the fact of the parties being of the full age of twenty-one years.

**15**  
Clerk not to  
be a surety

**936.** No clerk of any District Court shall become a surety of an administration or guardianship bond.

**16**  
Who may  
institute  
proceedings  
on bond

**937.** Any person interested in the estate may by leave of the court or judge institute proceedings in his own name on the bond or bonds without an assignment thereof to him.

**17**  
Filing of  
caveat

**938.** Any person intending to oppose the issue of any grant may personally or by his solicitor file a caveat in the office of the clerk of a District Court in which the application is pending, or in the office of the Deputy Attorney General.

**939.** The caveat shall be signed by the party on whose behalf it is filed or by his solicitor and shall set out the name, residence and occupation of the caveator, his address or that of his solicitor, full particulars of his interest in the person or estate and shall be accompanied by an affidavit or statutory declaration verifying the statements in the caveat and showing that it is not entered for the purpose of delaying or embarrassing any person interested in the person or estate in respect of which it is made. **18** What caveat is to contain

(2) The clerk of the court shall forthwith send to the Deputy Attorney General a copy of any caveat or withdrawal of any caveat filed in his office.

(3) The Deputy Attorney General shall forthwith notify the clerk of the court in which the application for grant is pending of the filing with him of any caveat or copy of caveat or withdrawal of caveat with respect to such application.

**940.** No further steps shall be taken in respect of the issue of a grant after the receipt by the clerk of the court in which the matter is pending of a caveat or notice of caveat as provided in Rules 17 and 18, until such caveat has expired or been discharged or withdrawn: **19** Filing of caveat a stay

Provided that no caveat shall affect any grant sealed on the day on which the caveat is filed unless notice in writing of such caveat has been received in the office where the grant is sealed, prior to such sealing.

**941.** Notwithstanding the filing of a caveat an application may be made by any person claiming to be entitled to a grant, but no further proceedings shall be taken upon such application until the caveat has expired or been discharged or withdrawn. **20** Application for grant notwithstanding caveat

**942.** A caveat shall remain in force for three months from the filing, unless it is otherwise ordered or the caveat is withdrawn, and shall then expire, unless the time is extended by order of a judge. Where a caveat has expired or has been withdrawn or discharged no further caveat in respect of the same subject matter shall be filed without the leave of the judge. **21** Duration of caveat

**943.** Any person whose application for a grant is affected by a caveat may serve notice of motion returnable not less than five days after service, calling upon the caveator to show cause why it should not be discharged, and the procedure on such application shall be that prescribed in Rules 54 and 55. **22** Motion to discharge caveat

**944.** Where the caveat is entered by the caveator personally, service of any notice or proceeding may be made upon him by mailing it to him by registered post at the address given in the caveat. **23** Service on caveators, how made

**945.** Where any probate or letters of administration or other legal document purporting to be of the same nature or an exemplification or certified copy thereof under the seal of the **24** Ancillary letters and resealing



court granted by a court of competent jurisdiction in the United Kingdom or in any province or territory of the Dominion or in any other British province, colony or dependency is produced to and a certified copy thereof deposited with the clerk of a District Court for any judicial district of the Province of Alberta in which there is property belonging to the deceased, together with an inventory and valuation of the property situate in the Province of Alberta, and the affidavit of the applicant in form 30 or 31, as the case may be, to these rules, together with a certificate from the court making the original grant or an affidavit or evidence to the satisfaction of the judge that the grant is wholly unrevoked and of full force and effect, and the prescribed fees are paid as on a grant of probate or administration the probate or letters of administration or other document aforesaid shall under the direction of the judge be sealed by the said clerk with the seal of the court for the judicial district for which the said clerk is appointed, and shall thereupon be of the like force and effect in the province as if the same had been originally granted by the said District Court, and shall be subject to any order of the last mentioned court or the judge thereof or any appeal therefrom as if the probate or letters of administration had been granted thereby. Such certified copy shall be certified by an official of the court out of which the original issued, or by the clerk of the court to which the application for resealing is made:

Provided that if upon any application for the resealing of any probate or letters of administration or other legal document purporting to be of the same nature or any exemplification thereof, the judge is satisfied that a beneficiary of the estate is an alien enemy, he shall attach to or endorse on every such probate or letters of administration or other legal document purporting to be of the same nature or any exemplification thereof, before causing the same to be resealed, the following words of restriction: "This grant is made upon the condition that no portion of the assets shall be distributed or paid to any beneficiary or creditor who is an alien enemy, wherever resident, or to anyone on his behalf, or to or on behalf of any person resident in any enemy country of whatever nationality, without the express sanction of the Crown acting through the Treasury; and if any distribution or payment is made contrary to this condition, the grant of probate or letters of administration will be forthwith revoked."

Alien enemy shall mean a citizen of any state or the subject of any sovereign at war with His Majesty.

Security on issue  
of ancillary  
letters

(2) Such grant shall not be sealed with the seal of the court until a certificate has been filed under the hand of the registrar, clerk or other officer of the court where the same issued that security has been given in a sum sufficient to cover as well the assets within the jurisdiction of said court as the assets within this province or in the absence of such certificate until security is given to the judge as in the case of granting original letters of administration.



(3) Upon the certified copy filed, the clerk shall endorse the particulars of the sealing of the original.

Endorsement  
on copy filed

**946.** If in any case it is in the interests of the estate of a deceased person that the same be forthwith administered or that someone other than the personal representative be appointed to administer the estate the judge may on application with such notice if any as he may direct appoint as administrator the public administrator or such other person as he deems proper and may in making such appointment dispense with the giving of security. C.O. c. 21, r. 588.

**25**

Administration  
by other  
than personal  
representative

**947.** Before probate of a will or letters of administration of the estate and effects of a deceased person have been granted any person may institute proceedings to restrain anyone from dealing or intermeddling with the estate. When such proceedings have been taken in good faith for the preservation of the property the party instituting such proceedings shall be entitled to costs of the action unless the court or judge shall otherwise order.

**26**

Proceedings to  
restrain from  
intermeddling

**948.** An executor or administrator may, without instituting any action or proceeding, apply to a judge *ex parte* for an order for advertising for creditors or other persons having claims against an estate, and the judge may in such order direct that a notice, in the form to be approved of by such order, shall be published in such newspaper or newspapers as may be directed by such order; or such executor or administrator may voluntarily without any order publish a notice in the form numbered 24 of these rules in a newspaper printed and published in the district in which the deceased person had his fixed or usual place of abode and carried on business alone or in partnership; provided that in case no newspaper is printed and published, then in a newspaper circulating in such district. In cases where the deceased person is not a resident and did not carry on any business within the district, then such notice shall be published in the district where the bulk of the property to be administered is situate.

**27**

Application  
*ex parte*  
for order for  
advertising

In all estates having a gross value of \$2,000 or less, such notice shall be published once. In estates having a gross value of over \$2,000 and not over \$5,000, such notice shall be published not less than once a week for two successive weeks. In all other estates such notice shall be published not less than once a week for three successive weeks.

The date fixed in such notice for the distributing of the estate shall be not less than four weeks from the date of the last publication.

**949.** Upon such notice as aforesaid being duly published, and after the expiration of the time named in such notice, such executor or administrator, as the case may be, shall be at liberty to distribute the assets of the testator or intestate or any part thereof amongst the parties entitled thereto, having regard only to the claims of which such executor or administrator has

**28**

Distribution  
of assets

then notice, and he shall not be liable for the assets or any part thereof so distributed, to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or any part thereof, but nothing in this Rule shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same.

**29**  
Verification  
of claims

**950.** Every creditor or other person presenting or sending in a claim to any executor, administrator or trustee shall verify the same by a statutory declaration and shall therein state whether he holds any security for his claim or any part thereof and shall give full particulars of the same; and if such security is on the estate of the debtor or on the estate of a third party for whom such debtor is only secondarily liable he shall put a specified value thereon and the executor, administrator or trustee may either consent to the right of the creditor or person presenting the claim to rank for the claim after deducting such valuation or he may require from the person presenting the claim an assignment of the security at the specified value to be paid out of the trust property or estate when sufficient is realized therefrom, and in such case the difference between the value at which the security is retained by the executor, administrator or trustee and the just amount of the gross claim shall be the amount for which the creditor or other person shall rank in respect of the estate.

Claims based  
on negotiable  
instruments

(2) If a creditor or other person holds a claim based upon a negotiable instrument upon which the debtor is only indirectly or secondarily liable and which is not mature or exigible, such creditor or other person shall be considered to hold security within the meaning of this Rule and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof but after the maturity of such liability and its non-payment he shall be entitled to amend and revalue his claim.

Failure to  
value security

(3) In case a person presenting a claim holds security for his claim or any part thereof and he fails to value such security as required by this Rule a judge of the District Court sitting in chambers may on summary application by the executor, administrator or trustee or by any other person interested in the trust property or estate, of which application three days' notice shall be given to such claimant, order that unless a specified value shall be placed upon such security and notified in writing to the executor, administrator or trustee within a time to be limited by the order such claimant shall in respect of the claim or the part thereof for which the security is held be wholly barred of any right to share in the proceeds of such trust property or estate; and if a specified value is not placed on such security and notified in writing to the executor, administrator or trustee according to the exigency of such order the said claim or the said part as the case may be shall be wholly barred as against such trust property or estate.



**951.** Every administrator to whom letters of administration are issued shall within two years after the grant of letters of administration or such further time as the court or judge may allow file in the office of the clerk of the District Court in the district wherein the grant was made a statement and an account verified by his oath showing his administration of the estate and shall apply to the judge usually exercising jurisdiction in such district to have his accounts passed and allowed, whereupon a motion may be made calling upon the creditors, next-of-kin and all persons interested in the estate to attend the passing of the accounts.

**30**

Administrator to file verified account within two years

(2) Upon the passing of the accounts the judge may give such directions as to the remuneration of the administrator, the payment of debts or charges, and the distribution of the assets as to him may seem meet, and may direct the payment into court of any moneys to which any person under the age of twenty-one years or any person outside of the province is entitled.

Remuneration of administrator, etc.

(3) Executors or administrators may file in the office of the District Court having jurisdiction, releases executed in form 32 or to a like effect, by all the adults interested in the estate. Where infants are interested, the releases may be executed by their duly authorized guardians and approved by the official guardian, whereupon the passing of accounts so far as such persons are concerned may be dispensed with and such order made for the discharge of the executor or administrator as seems proper under the circumstances. Such releases shall be signed and sealed in the presence of a witness, who shall sign his name as such to the release, and who shall appear before one of the following persons and make an affidavit in form 33, or to the like effect:

(a) If made in any province of Canada, before a judge of any court of record, any commissioner authorized to take affidavits in such province for use in any court of record in this province, or before any notary public under his official seal; or

(b) If made in Great Britain or Ireland, before a judge of the Supreme Court of Judicature in England or Ireland, or of the Court of Sessions or of the Judiciary Court in Scotland, or a judge of any of the county courts within his county, or the mayor of any city or incorporated town, under the common seal of such city or town, or before any commissioner in Great Britain or Ireland, authorized to take affidavits therein, for use in any court of record in the province, or a notary public under his official seal; or

(c) If made in any British Colony or possession out of Canada, before a judge of any court of record, the mayor of any city or incorporated town under the common seal of such city or town, or notary public under his official seal; or

(d) If made in any foreign country, before the mayor of any city or incorporated town, under the common seal of any such city or town, or before the British consul, vice-consul or consular



agent residing therein, or before any judge of any court of record or a notary public under his official seal:

Provided that the judge may upon being satisfied of the due execution of such release, admit the same notwithstanding that the proof of its execution may be defective under the foregoing provisions.

(4) There shall be indorsed the following words upon all letters of administration:

"By the oath which you have taken as administrator you are bound to render a true account of your administration whenever required by law so to do. You are required to file within two years after the grant of letters of administration in the office of the clerk of the court, which made the grant, a statement of account duly verified under your oath, showing how the estate has been dealt with."

**31**  
Administration  
accounts

**952.** Executors and administrators may voluntarily exhibit an inventory of the property of the deceased and render an account of their executorship or administration, or may be called upon to do so, on the application of any person interested in the estate, by order of the judge.

**32**  
Accounts  
where infants  
or lunatics

**953.** When infants or lunatics are interested in an estate, executors and administrators shall within a period of two years after grant made, and sooner if the judge shall so direct, and at intervals of two years thereafter unless otherwise ordered, exhibit under oath a true and perfect inventory of the property of the deceased, and render a just and full account of their executorship or administration. The judge shall upon application made to him for that purpose have power to extend the said period of two years.

**33**  
Accounts  
of guardians

**954.** Guardians may voluntarily exhibit an inventory of the property of the infants and render an account of their guardianship or may be called upon to do so on the application of any person interested by order of the judge. The provisions of Rule 32 shall apply to guardians of infants' estates and such guardians shall pass their accounts within the same time and in the same manner as executors and administrators are required to do by that Rule.

**34**  
The inventory  
to be filed  
with clerk

**955.** The inventory and accounts shall be filed with the clerk of the court, verified by oath of the executor, administrator or guardian, and thereupon the judge shall upon application to him fix a time and place for an audit and give directions as to the persons to be served with notice thereof.

**35**  
Supreme Court  
rules to govern

**956.** The general Rules which in the Supreme Court govern references under judgments or orders, and the taking of accounts and the practice and procedure thereof for the time being, so far as the same can be made to apply, shall be adopted in the case of the auditing of an executor's, administrator's or guardian's account by the judge, and the judge may enter into and make full inquiry and accounting of and concerning the

whole property of the deceased or of the infants, and the administration and disbursements thereof in as full and ample a manner as can be had and done in the Supreme Court under an administration order, and for such purpose take evidence and decide all disputed matters arising in such accounting, subject to any appeal under the provisions of *The District Courts Act*.

**957.** Persons interested in the taking of such accounts or the making of such inquiries shall, if resident within Alberta, be entitled to not less than seven days' notice thereof, and if resident out of Alberta to such notice as the judge shall direct. **36**  
Length of  
notice

**958.** Upon the passing of the accounts the judge may give such directions as to the remuneration of executors, administrators or guardians, the payment of debts or charges and the distribution of the assets as to him may seem meet, and may direct the payment into court of any moneys to which any person under the age of twenty-one years, any lunatic, or any person outside of the province is entitled. **37**  
Remuneration  
of executors,  
etc.

**959.** On the final winding up of an estate or passing of accounts of a guardian, the judge may order the bond to be cancelled, and the administrator or guardian and the sureties to be discharged. **38**  
Order as to  
bond

**960.** Citations, summonses or notices issued by the judge in the exercise of probate jurisdiction may, in the discretion of the judge, instead of being directed to any person or persons by name, be directed generally to the next-of-kin, creditors and other persons interested in the estate, and shall be served personally or by publication or in such manner as the judge shall by order direct. **39**  
Citations  
generally

#### CLERKS.

**961.** Every clerk of a District Court shall keep such books in probate, administration and guardianship matters as may be prescribed by the Attorney General from time to time. He shall keep such books duly indexed, and shall also keep an index of the names of testators or intestates or of executors or administrators and of guardians and infants, which shall be arranged alphabetically. **40**  
Books

**962.** Every clerk shall duly endorse and file all papers received by him and enter a note thereof and of every proceeding in the court in the books to be kept. **41**  
Filing papers

**963.** When it is so desired by any applicant attending personally at the office of the clerk for grant of probate or administration and the value of property devolving does not exceed \$400, the clerk of the court in which the application is to be made may prepare the application and all other forms necessary in non-contentious business without the intervention of a solicitor; but in no other case shall he prepare the papers for grant, and in no other case shall any person other than the **42**  
Small estates,  
preparing  
papers



applicant or his solicitor, either directly or indirectly, prepare the application or other papers to be used in any application in probate or administration matters, nor shall any person other than the applicant or his solicitor or counsel be permitted to appear in probate, administration or guardianship matters.

**43**  
Applications to  
be numbered,  
endorsed and  
entered

**964.** The clerk shall properly number and endorse the date of receipt of all applications for the grant of probate, administration or guardianship received by him in the order in which they are received, and an entry thereof shall be made in the books to be kept for that purpose, with a number prefixed to correspond with the number on the application.

**44**  
Succession  
duty

**965.** Immediately upon receipt by him of the duplicate statement required to be filed with the clerk of the court under the provisions of section 6 of *The Succession Duties Act* (or under any similar provision which may be hereafter passed), the clerk shall transmit one copy by registered letter to the Provincial Treasurer, and file the other copy with the papers in the matter to which it relates in his office. No grant of probate or administration shall issue, nor shall any grant be resealed, until after the receipt by the clerk of a certificate from the Provincial Treasurer fixing the amount of duty to be paid in respect of the estate, if any, nor until such duty is paid or security furnished as required by law.

**45**  
Orders to be  
noted

**966.** Every order made by the judge upon or in reference to any application shall be noted by the clerk in the procedure book and a copy thereof filed.

**46**  
Procedure  
book, grants  
and revocations

**967.** When a judge makes an order for the grant of probate, administration, or guardianship, or for resealing a grant, the clerk shall record such grant or order in the procedure book, and in case of a grant of probate or letters of administration with the will annexed, an exact copy of the will and codicil, if any, to which such probate or administration relates shall be underwritten. If a grant or order be afterwards revoked a note of such revocation shall be entered across the record of grant in red ink.

**47**  
Bonds to be  
recorded

**968.** Administration and guardianship bonds and the affidavits of justification and of execution shall be filed with and recorded by the clerk in the proper books.

**48**  
Grants to be  
signed and  
sealed

**969.** All grants of probate and letters of administration and guardianship shall be signed by the clerk and sealed with the seal of the court from which they are issued, and the copy of the will and codicil, if any, annexed to a probate or to letters of administration shall be authenticated by the signature of the clerk.

**49**  
Entry of  
caveats

**970.** Every clerk shall number, endorse and enter all caveats lodged with him in the same manner as provided in respect to applications for grants.



APPEALS.

**971.** Any person considering himself aggrieved by any order or judgment of a District Court or being dissatisfied with the determination of a judge thereof in point of law on any matter or cause relating to probate, administration or guardianship may, subject to the Rules of Court in respect of appeals, appeal to the Appellate Division. **50** Appeals

**972.** When an appeal is so lodged, the judge or the District Court shall upon the application of the appellant order all proceedings in the matter to be stayed upon such terms as he may see fit. **51** Stay on entry of appeal

**973.** Upon a certificate from the registrar or acting registrar of the Appellate Division that an appeal has been lodged in his office, the clerk of the court shall forthwith transmit (at the expense of the appellant) to the registrar or acting registrar of the Appellate Division the documents, instruments, affidavits, and papers in the matter or cause appealed, deposited or filed in such District Court office, together with the judgment or decision of the judge. The registrar or acting registrar of the Appellate Division shall, upon the disposal of the appeal and the issue of the judgment on such appeal, return the said documents, instruments, affidavits and papers, together with a certified copy of the judgment of the Appellate Division to the clerk of the court from whom he received same. **52** Papers to be forwarded on appeal

**974.** Any person may demand and on payment of the proper fees receive from the clerk in whose custody the papers are a copy of any paper, proceeding or document in administration, probate or guardianship matters, which copies may be certified by the clerk under seal, if so required. The clerk shall also furnish exemplifications of probates, letters of administration, or guardianship. **53** Copies and exemplification

CONTENTIOUS BUSINESS.

**975.** All contentious business shall be begun by way of notice of motion before the judge in chambers. On the return of the notice the judge may hear the matter in a summary way on the affidavits filed or on *viva voce* testimony, or he may direct an issue to be tried for the purpose of ascertaining any facts in dispute, and may fix a time for the trial of such issue. Upon the order directing the issue being filed, the issue shall proceed to trial as if it were an ordinary case in the District Court. **54** Commenced by notice

**976.** Upon such summary hearing or upon the trial of the issue, as the case may be, the judge may make an order disposing of the matter involved, and may make such order as to costs as he may deem proper, and such order shall be final, subject only to appeal under Rule 50. **55** Order on hearing

## PROOF OF WILL IN SOLEMN FORM.

**56**  
Proof of will  
in solemn form

**977.** When a will is voluntarily propounded for proof in solemn form, the judge shall after examining the petition and proofs fix a time and place for taking evidence in support of the will, and grant a summons to see proceedings at such time and place. This summons is to be served upon all persons having or claiming to have an interest in the question of the validity of the will.

**57**  
Evidence

**978.** At the time and place fixed the person propounding the will shall produce for examination one or more of the witnesses to the will, if he or they are alive, and shall give such further evidence generally of the validity as the judge may desire.

**58**  
Proceedings  
if contentious

**979.** When any of the persons summoned attends and takes part, the proceedings if they go beyond the cross-examination of the witnesses to the will, shall be continued and disposed of as provided for in Rules 54 and 55.

**59**  
Notice to  
parties and  
proof

**980.** The same method of notifying parties and proving the will shall, as nearly as may be, be followed in a case where an executor is put upon proof of a will in solemn form by compulsion.

**60**  
Caveat to  
ensure proof  
in solemn form

**981.** A person who files a caveat merely to ensure a will being proved in solemn form shall state in the caveat that he only desires to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, but shall be subject to liability in respect to costs in the discretion of the judge.

DEPOSIT OF WILLS AND CODICILS OF LIVING PERSONS IN  
DISTRICT COURTS.

**61**  
Deposit of  
wills of  
living persons

**982.** Wills and codicils of living persons may be deposited in the office of the clerk of the District Court, subject to the following rules and regulations:

(1) The will or codicil to be deposited must be enclosed in a sealed envelope and delivered to the clerk of the court, either by the testator himself, or by some person specially authorized by him to deposit the same on his behalf.

(2) The will or codicil so deposited will not be delivered up to any person, but must remain in the clerk's office until after the testator's death, unless revoked by him in manner herein-after mentioned.

(3) In case the testator himself deposits his will or codicil, he will be required to sign his name, or acknowledge his signature, in the presence of the clerk of the court to an endorsement on the envelope, in which the will or codicil is enclosed, to the following effect:



"This sealed packet contains the last will and testament (or codicil to the last will and testament, or last will and testament and codicil thereto), bearing date respectively (*here state the dates of all the papers enclosed*), of A.B., of, etc., whereof C.D., of, etc., and E.F., of, etc., are appointed executors, and the same are brought into the office of the clerk of the District Court of the District of . . . . ., by me for safe custody, there to remain deposited until after my decease, unless previously withdrawn by me in person."

The residences of the testator and of the executors are to be set forth in this endorsement and also the date of the signature.

(4) In case the testator authorizes some other person to deposit his will or codicil for him he will be required to subscribe his name in presence of an attesting witness to an endorsement on the envelope in which the will or codicil is enclosed, to the following effect:

"This sealed packet contains the last will and testament (or codicil to the last will and testament, or last will and testament and codicil thereto) of me, A.B., of, etc., whereof C.D., of, etc., and E.F., of, etc., are appointed executors, and I authorize G.H. to deposit the same for safe custody in the office of the clerk of the court of the District of . . . . ., there to remain deposited until after my decease, unless previously withdrawn by me in person. (Signed) A.B. Witness, K.L."

The residences of the testator and of the executors, and the date of signature are to be set forth in this endorsement.

(5) The packet containing the will or codicil must be accompanied by an affidavit from the attesting witness to the signature of the testator to the above endorsement, to the effect that the signature of the testator to the endorsement (witnessed by the deponent), is in the proper handwriting of such testator, and was by him signed in the deponent's presence on the day mentioned in the endorsement, and that the signature "K.L." is in the proper handwriting of the deponent. An affidavit will also be required from the person authorized to deposit the packet to the effect that the sealed packet produced for the purpose of being deposited for safe custody in the office of the clerk of the court of the District of . . . . ., and on the back of which the deponent has signed his name, is at the time of making the affidavit precisely in the same state, plight, and condition as when received by the deponent from the hands of A.B. (the testator) on a day to be mentioned as that on which he received it.

(6) The last mentioned affidavit is to be sworn before the clerk of the court to whom the packet containing the will or codicil is delivered.

(7) A minute will be drawn up in duplicate by the clerk of the court setting forth the production of the packet containing the will or codicil and the affidavits (if any), and when and by whom the same were produced, and the declaration of the testator, or his agent, that he deposited the same in the office of the clerk of the court for safe custody, also acknowledging receipt of



the packet. One copy of this minute will be delivered to the testator, or his agent, and the other retained in the office of the clerk of the court.

(8) Envelopes for wills and codicils with necessary endorsements and forms of affidavits are to be had on application to the clerk of the court.

(9) In the event of a testator desiring to withdraw a will deposited in the office of the clerk of the court, he will be at liberty to do so upon his producing the original minute of the clerk of the court handed to him on depositing the same or satisfactorily accounting for its absence, and such proof of identity as the clerk of the court may deem necessary.

(10) The clerk of the court, upon any will being deposited in his office under the provisions of this rule, shall within three days from the date of such deposit, forward by registered mail to the Deputy Attorney General a memorandum thereof to the following effect:

*"To the Deputy Attorney General,  
Edmonton.*

"A packet containing the last will and testament (codicil to the last will and testament or last will and testament and codicil thereto) bearing date (respectively) the..... of A.B. of.....whereof C.D. of..... and E.F. of.....are appointed executors, was on the.....day of.....A.D. 19...., deposited in the office of the Clerk of the District Court of the Judicial District of.....by.....

"Dated at.....this.....day of.....A.D. 19..

.....  
"Clerk."

(11) In the event of the withdrawal of any will in respect of the deposit of which a memorandum or a certificate has been forwarded by registered mail to the Deputy Attorney General at Edmonton under the provisions of this Rule, the clerk of the court shall within three days after such withdrawal forward to the Deputy Attorney General at Edmonton a memorandum to the following effect:

*"To the Deputy Attorney General,  
Edmonton.*

"The last will and testament (codicil or as the case may be) .....bearing date (respectively) the.....of A.B. of.....and whereof C.D. of..... and E.F. of.....were appointed executors, and which was deposited at this office on the .....day of..... A.D. 19.... was on the.....day of..... A.D. 19...., withdrawn by ..... (the testator).

"Dated at.....this.....day of.....A.D. 19..

.....  
"Clerk of the District Court of the  
Judicial District of....."

(12) The clerk of the Supreme Court of Edmonton shall forthwith transmit to the Deputy Attorney General all memor-

anda or certificates relating to the deposit or withdrawal of wills with any clerk of the court by virtue of the rules heretofore in force, together with the books and records relating thereto.

REMOVAL OF CASES FROM THE DISTRICT TO THE  
SUPREME COURT.

**983.** In every case in which an application for grant of probate, administration or guardianship has been made and there is contention as to the grant, and the parties in the case agree, the contention shall be referred to and determined by a judge of the Supreme Court on a case to be prepared, and no grant shall issue on the application until the contention is terminated and disposed of by judgment or otherwise. **62**  
Reference to  
Supreme Court  
judge of  
contention

**984.** Any cause or proceeding in the District Court in which any contention arises as to the grant of probate or administration or in which any disputed question of law or facts may be raised relating to matters and causes testamentary shall be removable by any party to the cause or proceeding into the Supreme Court by order of a judge thereof to be obtained on a summary application supported by affidavit of which reasonable notice shall be given to the other parties concerned. **63**  
Removal of  
contention in  
Supreme Court

(2) The judge making the order may impose such terms as to payment of or security for costs or otherwise as to him seems just. **Terms**

**985.** Upon any cause or proceeding being so removed a judge of the Supreme Court shall have full power to determine and otherwise deal with the same as with any cause or claim originally begun in the said court; and the final order or judgment thereon shall be transmitted together with all papers, to the clerk of the District Court from which the cause or proceeding was removed. **64**  
Powers of  
Supreme Court  
judge  
Transmission  
of order or  
judgment

**986.** The fees payable for the performance of duties and services under these Rules to clerks shall be the fees set out in the Rules or contained in schedule 2 hereof. **65**  
Fees

**987.** The forms in schedule 1 hereto are to be adopted and followed as nearly as the circumstances of each case will allow in all applications and proceedings under these Rules. **66**  
Forms

**988.** The clerk shall tax costs subject to an appeal to the judge. **67**  
Taxation  
of costs

**989.** In the case of any person dying without having left a will or testamentary disposition, the official guardian may, at any time after the decease of such person, make application to be appointed administrator of such estate, and in any such case, and also in the case of a person dying leaving a will or other testamentary disposition, make application to be appointed guardian of the estates and persons of any infant children of any deceased person; and upon filing with the clerk of the District Court an application, together with a copy of his appoint- **68**

ment as official guardian, the clerk shall forthwith, without reference to the judge, and notwithstanding the provisions of any rule requiring any further or other information, sign, seal and issue to the official guardian, without fee, letters of administration or guardianship, according to his application.

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### SCHEDULE I.

#### TABLE OF KINSHIP.

Persons applying for administration are to be described in the oath as follows:

A husband as.... "The lawful husband."

A wife as..... "The lawful widow and relict."

A father as..... "The natural and lawful father and next-of-kin."

A mother as..... "The natural and lawful mother and only next-of-kin."

A child as..... "The natural and lawful child, and one of the next-of-kin," or "the natural and lawful child, and one of the next-of-kin."

A brother as..... "The natural and lawful brother."

A sister as..... "The natural and lawful sister." If there be no parents living, the brother or sister is further to be described as "one of the next-of-kin," or "the only next-of-kin."

An uncle as..... "The lawful uncle" and "one of the" or "only next-of-kin."

An aunt as..... "The lawful aunt."

A nephew as..... "The lawful nephew" and "one of the" or "only next-of-kin."

A niece as..... "The lawful niece" and "one of the" or "only next-of-kin."

A grandparent, grandchild, cousin, etc., is to be described as "lawful" and "one of the next-of-kin" or "only next-of-kin."

If an intestate leave a brother or sister who is cleared off, and a nephew or niece apply for a grant, he or she should be described not as "next-of-kin," but as "the natural and lawful child of A.B. (the natural and lawful brother (or sister) of the intestate who died in his lifetime) and as such one of the persons entitled in distribution to his personal estate."

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### FORM 1.

#### Rule 4.

#### APPLICATION FOR PROBATE, ADMINISTRATION OR GUARDIANSHIP.

In the District Court of the District of.....  
In the matter of the estate of.....late of  
....., deceased.

Or

In the matter of....., the infant children  
of....., late of.....  
deceased.

The application of.....of the.....  
.....of.....in the  
Province of Alberta (*here state the status of the applicant, e.g., "executor of the will," etc., or "lawful widow," or "natural and lawful son and one of the next-of-kin," or as the case may be*) who prays for a grant of probate of the will (with codicils, if any) (*or "for letters of adminis-*



tration of the property," or "of the personal estate and effects of the deceased," or "for letters of guardianship of the persons and estates of the above named infants") of the said deceased, particulars in regard to which appear in the annexed affidavits.

Dated at.....this.....day of.....  
19.....

.....  
(Applicant, and P.O. Address)  
or.....  
Solicitor for A.B., the applicant, and P.O.  
address of each.

FORM 2.

Rule 6.

[The following or to the like effect must be sworn to on application for administration. It may be in one affidavit or in several.]

In the District Court of the District of.....

In the estate of....., deceased.

I, (name in full), of.....In the Province of  
Alberta.....make oath and say:

1. That I am the person applying for administration of the property of.....late of.....in the.....deceased;

2. That the said deceased died on or about the.....day of.....A.D. 19....., at.....and that he had at the time of his death his fixed place of abode at....  
.....(If his fixed place of abode was outside Alberta, add: "but had at such time property in the said District of....."), and that during the six years next preceding his death he resided at the following places: (State places in order of date and residence and period of residence at each place);

3. That the deceased at the time of his death was.....years of age, and (a bachelor, widower, spinster or widow, or left a lawful husband or widow, him or her surviving, as the case may be).....;

4. That I am (describe the relationship of applicant to deceased according to table of kinship and show why nearer relative, if any, is not applying) .....

5. That I am of the full age of twenty-one years;

6. That I have made or caused to be made diligent and careful search in all places where the deceased usually kept his papers and in his depositories in order to ascertain whether the deceased had or had not left any will, but have been unable to discover any will, codicil or testamentary paper, and I verily believe that he died without having left any will, codicil or testamentary paper whatsoever;

7. That the value of the.....property of the said deceased which he in any way died possessed of or entitled to and for and in respect of which letters of administration are to be granted is under.....dollars; that the value of the real property is under.....dollars; and that full particulars and a true appraisement of all said property are annexed hereto;

8. That I will faithfully administer the property of the deceased by paying his just debts and any taxes and duties payable in respect of the estate and by distributing the residue (if any) of his estate according to law, and that I will exhibit under oath a true and perfect inventory of the property of the deceased and render a just and true account of my administration whenever required by law so to do;

9. That I will surrender to this court the grant to be issued to me whenever so required by the court or a judge thereof;

10. That to the best of my knowledge, information and belief no other application for a grant of letters of administration or probate of the will of the deceased has been made.

Sworn at the.....  
 of.....in the }  
 Province of Alberta, this..... }  
 day of.....19..... }

Before me,

.....  
*A Commissioner, etc.*

### FORM 3.

#### Rule 7.

#### ADMINISTRATION WITH WILL.

*[The following or to the like effect must be sworn to in support of an application for administration with the will annexed. It may be in one affidavit or in several.]*

In the District Court of the District of.....

In the estate of.....  
 deceased.

I, A.B., of the.....of.....  
 in the.....make oath and say:

1. That I believe the paper writing (or these paper writings) hereto annexed now marked by me with my signature to contain the true and original last will and testament (and codicil or codicils thereto) of (name in full) late of the.....of.....in the District of.....in the Province of Alberta, (occupation or quality of deceased) and am applying for administration of the estate of the said.....with the will;

2. That the said deceased died on or about the.....  
 day of.....A.D. 19....., at.....  
 that the deceased had at the time of his death a fixed place of abode at.....in the Province of Alberta. (or if the abode was outside Alberta, insert here: "but had at such time property in the said District of.....in the Province of Alberta");

3. That the said deceased was at the time of the execution of the said will (and codicil or codicils thereto) of.....years of age, and did not subsequently intermarry with any person, and that during the six years next preceding his death, he resided at the following places: (here state places of residence in order of date, and approximate period of residence at each.)

4. [Account for the custody of the will or codicil from its execution to the time of the application.]

5. That I am a (here give status of applicant according to table of kinship and show how nearer relatives are cleared off).....  
 of the deceased and that (give name of executor and proceed thus: "in the said will named is dead without having taken out probate thereof," or "has renounced all right and title to the probate and execution of the said will," etc., or "The deceased did not in his will name any executor," or as the fact is);

6. That I am of the full age of twenty-one years;

7. That the fair market value of the whole property of the said deceased, which he in any way died possessed of or entitled to, and for and in respect to which, "letters of administration with the will are," to be granted, is under.....dollars;

That the value of the personal estate and effects is under.....dollars, and of the real estate is under.....dollars, and that full particulars and a true appraisalment of all said property are exhibited herewith;

8. That I will administer the property of the said deceased according to the tenor of his will (or will and codicils) by paying his just debts, any taxes and duties payable in respect of the estate, and the legacies contained in his will (or will and codicils) so far as the same shall thereto extend and the law bind me, and distribute the residue (if any) of the estate according to law, and that I will exhibit under oath a true and perfect inventory of all and singular the property of the said deceased and render a just and true account of my administration whenever required by law so to do;

9. That I will surrender to this court the grant to be issued to me, whenever so required by the court or a judge thereof;

10. That to the best of my knowledge, information and belief no other application has been made for letters of administration of the estate of the deceased or for a grant of probate of any will of his.

AFFIDAVIT OF EXECUTION OF WILL BY SUBSCRIBING WITNESS.

I, (A.B.) of.....in the.....  
of.....make oath and say:

1. That on or about the.....day of.....  
in the year of our Lord one thousand nine hundred and.....  
I was personally present and did see the paper writing hereto annexed, now marked by me with my signature, signed by the said.....  
as the same now appears as and for his (or her), last will and testament, and that the same was so signed by the said.....  
in the presence of me and of.....of.....  
in the....., the other subscribing witness we being both present at the same time; whereupon the said.....  
and I did at the request of the said....., and in his presence and in the presence of each other attest and subscribe the said will (or codicil), and I verily believe that the testator at the time of the execution of the said will was of sound and perfect mind, memory and understanding.

*Note.—If there are erasures or interlineations in the will a clause should be added specifying same and showing that they existed at the time of the execution and in such cases the matter as to plight should be included in this affidavit, and if the testator signed by making his mark, or if another signed for him by his direction, it must be shown that the will was read over to him before execution and that he appeared to fully understand its contents.*

2. That the paper writing hereunto annexed and marked by me with my signature, bearing date the.....day of.....  
A.D. 19.., beginning thus.....; ending thus.....  
and being subscribed thus.....purporting to be (or a codicil to) the last will of the said....., deceased, has been viewed and perused by me and I have particularly observed that (here recite the various alterations, erasures and interlineations, if any, and the general plight and condition of the will, or any other matter requiring to be accounted for), and I say that the said will (or codicil) is now in all respects in the same state, plight and condition as when it was signed by the said deceased and the said witnesses (or as the case may be).

*Note.—Paragraph 2 is generally required only in cases where erasures or irregularities appear on the face of the will or codicil or where the date of execution has been omitted, in which case the date is to be deposed to.*

Sworn at the.....  
of.....in the.....  
Province of Alberta, this.....  
day of.....19.....

Before me,

.....  
A Commissioner, etc.



## FORM 4.

## Rule 8.

## AS TO PROBATE.

[The following or to the like effect must be sworn to in support of an application for probate. It may be in one affidavit or in several.]

In the District Court of the District of.....  
In the estate of.....  
deceased.

I (or we), (names in full) of the.....of.....  
in the.....(occupation) make oath and say:

1. That A.B., late of.....in the Province of  
.....(occupation) died on or about the.....  
.....day of.....A.D. 19  
at.....and at the time of his death had his fixed place of  
abode at.....in the District of.....  
(or as the case may be. If his fixed abode was outside Alberta, add:  
"but had, at such time property in the said District of.....  
in the Province of Alberta") and resided during the six years immedi-  
ately preceding his death at the following places: (here state places of  
residence in order of date and period of residence at each.)

2. That the deceased at the time he made his will was.....  
years of age, and that subsequent to the execution of his will the said  
deceased did not intermarry with any person;

3. That the fair market value of the whole property of the said de-  
ceased, which he in any way died possessed of or entitled to, and for  
and in respect to which probate of the said will (and codicils, if any) is  
to be granted, is under.....dollars;

4. That the value of the personal estate and effects is under.....  
dollars, and of the real estate is under.....dollars, and  
that full particulars and a true appraisalment of all said property are  
exhibited herewith;

5. That I (or we) believe the paper writing (or the paper writings)  
hereto annexed and now marked by [me or us] with [by or our] sig-  
natures to contain the true and original last will and testament, (and  
codicil or codicils) of.....late of the.....  
of....., in the District of.....  
and has been in the custody of the following persons since the time of  
its execution. (Name the parties and state that the document is in the  
same condition as when executed);

6. That I am (or each of us is) of the full age of twenty-one years;

7. That I am (or we are) the.....executor  
(or the executors, or one of the executors, therein named, or executor  
according to the tenor thereof, executor during life, executrix during  
widowhood, or as the case may be, and state relationship if stated in the  
will or codicil), therein named and that I,.....  
will faithfully administer the property of the said testator by paying his  
just debts, all taxes and duties payable in respect of the estate, and the  
legacies contained in his will (or will and codicils), so far as the same  
will thereunto extend and the law bind.....and  
distribute the residue, if any, of the estate according to law; and that  
I.....will exhibit under oath a true and perfect  
inventory of all and singular the property of the testator, and render a  
just and full account of.....executorship whenever  
required by law so to do;

8. That I will surrender to this court the grant to be issued to me  
whenever so required by the court or a judge thereof;

9. That to the best of my knowledge, information and belief no other  
application has been made for a grant of probate of the will of the  
deceased.

Sworn at the.....  
of.....  
in the Province of.....  
this day of.....A.D. 19.....

Before me,

.....  
A Commissioner, etc.

FORM 5.

Rule 9.

[The following or to like effect must be sworn to in support of an application to be appointed guardian.]

In the District Court of the District of.....

In the matter of the guardianship of the infant child (or children) of C.F. (full names of deceased), deceased.

I, (name in full), of the.....of.....  
in the....., make oath and say:

1. That A.B., late of the.....of.....  
in the Province of Alberta, died on or about the.....  
day of....., 19....., at.....  
and had at the time of his death his fixed place of abode at the.....  
of.....In the District of.....(or  
as the case may be. If the deceased died outside Alberta state whether  
he had property in Alberta);

2. That the said deceased died a widower (or as the case may be),  
leaving surviving him.....his natural and lawful  
children who reside at the.....of.....

That the said C.D. is an infant of.....years of age and  
the said E.F. is an infant of.....years of age;

3. That the required notice of intention to be appointed guardian has  
been given (or as the case may be); that I am of the full age of twenty-  
one years and am the paternal uncle (or as the case may be), of the  
said infants.

*Note.—If there is a nearer relative than the applicant the reason why  
he does not apply should be deposed to.*

4. That the said deceased died intestate (or as the case may be), and  
without having appointed a guardian of the said infants;

5. That the value of the property of the said deceased, which he is any  
way died possessed of or entitled to, and to which the said infants are  
entitled is about.....dollars and under.....  
dollars; that the value of the personal estate to which the said infants  
are entitled is about.....dollars and under.....  
dollars, and that the annual value of the real estate is about.....  
.....dollars, and under.....dollars, and that full  
particulars of both said personal and real estate and an appraisement  
thereof are exhibited herewith, and that such particulars and appraise-  
ment are true;

6. That I will, if I am appointed such guardian, faithfully perform the  
duties of guardianship, and that I will, when my said ward becomes of  
the full age of twenty-one years, or whenever the said guardianship is  
determined, or sooner, if thereto required by the said District Court, or  
by a judge thereof, render to my said ward or to his executors or admin-  
istrators a true and just account of all goods, moneys, interest, rents,  
profits, property or other estate of my said ward—which shall have  
come or which might but for my default have come into my hands or  
possession or under my control, and will thereupon without delay trans-  
fer, deliver and pay over to my said ward,—or to his executors or  
administrators the estate or the sum or balance of money which may or  
which should but for my default be in my hands or possession or under  
my control, belonging to my ward, deducting therefrom and retaining  
such reasonable sum for my expenses and charges as shall upon an audit  
of my accounts be allowed by the court or a judge;

7. That I will surrender to this court the grant to be issued to me  
whenever so required by the court or a judge thereof;

8. That to the best of my knowledge, information and belief no other application for a grant of letters of guardianship of the estate or person of the said infant (*as the case may be*) has been made.

Sworn at the..... }  
of..... }  
Province of Alberta, the..... }  
day of.....19..... }

Before me,

.....  
(*Person authorized to administer oaths*).  
A Commissioner, etc.

FORM 6.

Rules 6, 7, 8 and 9.

*Note.—The matter in this form may be embodied in the Oath of Executor or Administrator, Forms 6, 7, and 8.*

INVENTORY AND VALUATION.

In the District Court of the District of.....  
In the estate of.....deceased.  
Inventory and valuation of the real and personal estate and effects of the said deceased,.....

<i>General description of property.</i>	<i>Valuation or amounts.</i>
Household goods and furniture.....	
Farming implements, etc.....	
.....	
Stock in trade.....	
Horses.....	
Horned cattle.....	
Sheep and swine.....	
Book debts and promissory notes.....	
Money secured by life insurance.....	
Bank Stock and other stock.....	
Securities for money.....	
Cash on hand.....	
Cash in bank.....	
Farm produce of all kinds.....	
Other property not before mentioned (if any).....	
.....	

Real estate.....  
I....., of the.....  
of....., in the Province of.....  
make oath and say:

That I am applying for.....of the said deceased, and that above is to the best of my knowledge, information and belief a true inventory and valuation of the real and personal estate and effects of the said deceased at the time of.....death so far as I can at present ascertain.

Sworn at the..... }  
of.....in the }  
Province of Alberta, this..... }  
day of.....19..... }

Before me,

.....  
A Commissioner, etc.



FORM 7.

Rule 9.

ELECTION BY MINORS OF A GUARDIAN.

In the District Court of the District of.....  
In the matter of the guardianship, etc.

Whereas,.....late of the.....  
of.....in the District of.....  
deceased, died on or about the.....day of.....  
19....., at....., in, etc., intestate, a widower  
(or widow, as the case may be) leaving C.D., E.F. and G.H., his natural  
and lawful children, and only next-of-kin, the said C.D. being a minor  
of the age of twenty years only, and the said E.F. being also a minor of  
the age of nineteen years only, and the said G.H. being an infant of the  
age of six years only (or as the case may be).

Now we, the said C.D. and E.F. do hereby make a choice of and elect  
.....(our lawful maternal uncle, or as the case may  
be) to be our guardian, for the purpose of his obtaining letters of  
administration of the property of the said.....  
deceased, to be granted to him until one of us attain the age of twenty-  
one years (or for the purpose of renouncing for us, and on our behalf,  
all right, title and interest to and in letters of administration, etc., as  
the case may be).

In witness whereof we have hereunto set our hands and seals this  
.....day of.....A.D. 19.....

.....(L.S.)  
.....(L.S.)  
.....(L.S.)

Signed, seal and delivered  
in the presence of

Note.—An affidavit of execution required.

FORM 8.

Rule 14.

BOND FOR ADMINISTRATION (WITHOUT WILL).

Know all men by these presents that we, A.B., of the.....  
of.....in the Province of Alberta; C.D., of the,  
etc., and E.F., of the, etc., are jointly and severally bound unto G.H., the  
judge of the District Court of the District of.....  
in the Province of Alberta aforesaid, in the sum of.....dollars,  
to be paid to the said G.H., or the judge of the said court for the time  
being, for which payment well and truly to be made we bind ourselves,  
and each of us for the whole, our and each of our heirs, executors and  
administrators, firmly by these presents. Sealed with our seals.

Dated the.....day of.....  
in the year of our Lord, 19.....

The condition of this obligation is such that if the above named A.B.,  
the intended administrator of all the property (or as the case may be),  
of.....late of the.....of.....  
in the.....of.....  
deceased (who died on or about the.....day of.....  
19.....) do, when lawfully called on in that behalf, make or cause to  
be made a true and perfect inventory of all the property of the said  
deceased, which has or shall come into the hands, possession or knowl-  
edge of the said A.B., or into the hands and possession of any other  
person or persons for him, and the same so made, do exhibit or cause  
to be exhibited into the registry of the District Court of the District  
of.....whenever required by law so to do, and the  
same property and all other property of the said deceased at the time

of his death, which at any time after shall come into the hands or possession of the said *A.B.*, or into the hands or possession of any other person or persons for him, do well and truly administer according to law, that is to say: do pay the debts which the said deceased did owe at his decease, and all taxes and duties which may be payable in respect of his estate, and further, do make or cause to be made, a true and just account of his said administration whenever required by law so to do, and all the rest and residue of the said property to deliver and pay unto such person or persons respectively as shall be entitled thereto under the provisions of any law now in force, or that may hereafter be in force in Alberta; and if it shall hereafter appear that any last will or testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said court, making request to have it allowed and approved accordingly if the said *A.B.* being thereunto required do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court; then this obligation to be void and of no effect, or else to remain in full force and virtue.

..... (L.S.)

..... (L.S.)

..... (L.S.)

Signed, sealed and delivered by {  
the above named *A.B.*, *C.D.*,  
and *E.F.*, in the presence of }

#### FORM 9.

#### Rule 14.

#### BOND FOR ADMINISTRATORS WITH WILL ANNEXED.

Know all men by these presents that we, *A.B.*, of the.....  
of....., in the Province of.....  
*C.D.*, of the, etc., and *E.F.*, of the, etc., are jointly and severally bound  
unto *G.H.*, the judge of the District Court of the District of.....  
....., in the Province of Alberta, aforesaid, in the sum  
of.....dollars, to be paid to the said *G.H.*, or the judge of  
the said court for the time being, for which payment well and truly to  
be made we bind ourselves and each of us for the whole, our and each  
of our heirs, executors and administrators, firmly by these presents.  
Sealed with our seals.

Dated the.....day of.....  
in the year of our Lord, 19.....

The condition of this obligation is such that if the above named *A.B.*,  
who has applied to be appointed the administrator, with the will of the  
property (or as the case may be) of....., late of  
the.....of.....in the.....  
deceased, who died on or about the.....day of.....  
.....A.D. 19....., do when lawfully called on in that  
behalf, make or cause to be made a true and perfect inventory of all and  
singular the property which has or shall come into the hands, possession  
or knowledge of the said *A.B.*, or into the hands and possession of  
any other person or persons for him, and the same so made, do exhibit  
or cause to be exhibited into the registry of the District Court of the  
District of....., whenever required by law so to do,  
and the same property, and all other the property of the said deceased  
at the time of his death, which at any time after shall come into the  
hands or possession of the said *A.B.*, or into the hands or possession of  
any other person or persons for him, do well and truly administer  
according to law, that is to say: do pay the debts which the said de-  
ceased did owe at his decease, and all taxes and duties which may be  
payable in respect of his estate, and then the legacies contained in the  
said will annexed to the said letters of administration to the said *A.B.*  
committed, so far as such property will thereunto extend and the law

bind him; and further do make or cause to be made a full, true and just account of his said administration, whenever required by law so to do, and all the rest and residue of the property, shall deliver and pay unto such person or persons as shall be by law entitled thereto then this obligation to be void and of no effect, or else to remain in full force and virtue.

Signed, sealed and delivered by }  
the above named A.B., C.D., }  
and E.F., in the presence of }  
..... (L.S.)  
..... (L.S.)  
..... (L.S.)

FORM 10.

Rule 14.

BOND TO BE GIVEN BY GUARDIANS.

Know all men by these presents that we, A.B., of the.....  
of....., in the Province of Alberta,.....  
K.L., of the..... of....., in the said  
province,..... and M.N., of the.....  
of..... in the said province,.....  
held and firmly bound unto G.H., the judge of the District of.....  
..... or the judge for the time being of the said court, in the sum  
of..... dollars, to be paid to the said G.H., or the judge  
of the court for the time being, for which payment to be well and truly  
made we do bind ourselves and each and every of us, our and every of  
our executors and administrators firmly by these presents. Sealed with  
our seals.

Dated the..... day of.....  
in the year of our Lord, 19.....

Whereas, the said A.B., having applied to be appointed guardian of  
the persons and estate of the infants (*names in full of infant or infants*)  
and hereinafter called the said wards, by the District Court of the  
District of....., according to the Rules in that  
behalf, is required to give security for the performance of the said trust.

Now the condition of this obligation is such that if the above bounden  
A.B., shall faithfully perform the said trust and that he or his executors  
or administrators will, when the said wards respectively become of the  
full age of twenty-one years, or whenever the said guardianship shall  
be or is determined, or sooner, if thereunto required by the said District  
Court, render to each of the said wards or to their respective executors  
or administrators a true and just account of all goods, moneys, interests,  
rents, profits, property or other estate of such wards which shall have  
come or which might but for his default have come into the hands or  
possession or under the control of the said A.B., and will thereupon  
exhibit under oath and render into the said court for audit and allow-  
ance, a just and full account of his guardianship, and will thereupon  
without delay, deliver and pay over to each and every of the said wards  
or to his or their executors or administrators, the estate or the sum or  
balance of money which may be or should but for his default be in the  
hands or possession or under the control of him the said A.B., belong-  
ing to the said ward or wards, deducting therefrom and retaining such  
reasonable sum for the expenses and charges of him the said A.B., as  
such guardian as by the said court or by the judge thereof shall have  
been allowed, then this obligation to be void, or else to remain in full  
force and virtue.

Signed, sealed and delivered by }  
the above named A.B., K.L., }  
and M.N., in the presence of }  
A.B..... (L.S.)  
K.L..... (L.S.)  
M.N..... (L.S.)



## FORM 11.

## Rule 14.

## AFFIDAVIT OF JUSTIFICATION BY SURETIES.

In the District Court of the District of.....  
 In the estate of....., deceased.  
 We, *C.D.*, of the.....of.....in the  
 Province of Alberta, yeoman, and *E.F.*, of the.....  
 of....., in the Province of Alberta, esquire, severally  
 make oath and say that we are the proposed sureties on behalf of the  
 intended administrator of the property (*or as the case may be*) of....  
 .....deceased, in the within bond named, for the faithful  
 administration of the said property (*or as the case may be*) of the said  
 deceased; and I, the said *C.D.*, for myself make oath and say that I  
 reside at the.....of....., in the  
 Province of Alberta, and own property within the said province to the  
 value of.....dollars over and above all encum-  
 brances thereon, and exemptions from seizure allowed by law and over  
 and above a sum sufficient to pay my just debts and every other sum  
 for which I am now bail, or for which I am liable as surety or endorser  
 or otherwise, and am of the full age of twenty-one years; and I, the said  
*E.F.*, for myself make oath and say that I reside at the.....  
 of....., in the said province, and own property  
 within the said province to the value of.....dollars  
 over and above all encumbrances and exemptions from seizure allowed  
 by law and over and above a sum sufficient to pay my just debts and  
 every other sum for which I am now bail or for which I am liable as  
 surety or endorser or otherwise, and am of the full age of twenty-one  
 years.

The above named deponents, *C.D.* and  
*E.F.*, were severally sworn the.....  
 day of.....  
 A.D. 19....., at the.....  
 of....., in the Province of  
 Alberta.

Before me,

.....  
*A Commissioner, etc.*

*Note.—This form may be changed to suit a guardianship bond.*

## FORM 12.

## Rule 14.

## AFFIDAVIT OF EXECUTION.

In the District Court of the District of.....  
 Canada  
 Province of Alberta.

In the estate of.....deceased.  
 I,....., of.....  
 in the Province of....., make oath and say as  
 follows:

1. I was personally present and did see.....  
 named in the.....instrument who is personally  
 known to me to be the person named therein duly sign and execute the  
 same for the purposes named therein.

2. The same was executed at the.....in the  
 .....and I am the subscribing witness to the execution  
 thereof by the said.....I personally know the

said..... and (he or each of them) in my belief is of the full age of twenty-one years.

Sworn at.....in the }  
Province of..... }  
this..... }  
day of..... }  
19..... }

Before me,

.....  
\* A Commissioner, etc.

*Note.—In the affidavit verifying the signatures of infants, e.g., the election of guardians, the age of each infant should be deposed to, stating the date of birth.*

FORM 13.

Rule 18.

CAVEAT.

In the District Court of the District of.....

Let nothing be done in the estate of A.B., late of.....  
in the Province of Alberta (merchant), deceased, unknown to C.D., of  
the.....in the said  
province (grocer), (or unknown to H.T., of the.....of  
.....in the said province, the solicitor of C.D., of the  
.....of.....in the said province).

The said C.D., is the natural and lawful son of the said deceased (or  
as the case may be).

The grounds on which this caveat is entered are (state fully).

Dated at the.....of.....in the  
Province of Alberta, this.....day of.....  
A.D. 19.....

.....C.D., of.....(P.O. Address).  
or H.T., solicitor for C.D., Esq.....(P.O. Address).

*Note.—Rule 18 requires that a caveat be accompanied by an affidavit  
of statutory declaration.*

FORM 14.

LETTERS OF ADMINISTRATION.

Canada

Province of Alberta.

In the District Court of the District of.....

Be it known, that on the.....day of.....  
A.D. 19....., letters of administration of all and singular the property  
(or as the case may be if grant is limited) of.....late of  
the.....of....., in the District  
of.....who died on or about the.....  
day of....., 19....., at.....Intestate  
and had at the time of his death a fixed place of abode at the.....  
of....., in the Province of Alberta (or as the case may  
be), (if out of Alberta, add: "but had at such time property in the Dis-  
trict of.....") were granted by the District Court of  
the District of.....to.....  
of.....in the Province of Alberta, the lawful widow  
(or as the case may be) of the said intestate, she having been first sworn

faithfully to administer the same by paying his just debts and all taxes  
and duties payable in respect of his estate and by distributing the  
residue (if any) of his property according to law, and to exhibit under  
oath a true and perfect inventory of all and singular the said property,

and to render a just and true account of his administration and to surrender these letters of administration whenever required by law so to do.

(SEAL)

.....  
Clerk of the Court.

#### FORM 15.

##### LETTERS OF ADMINISTRATION WITH WILL ANNEXED.

Canada

Province of Alberta.

In the District Court of the District of.....  
Be it known that....., late of the.....  
of....., in the Province of Alberta.....  
deceased, who died on or about the.....day of.....  
19....., at....., and who at the time of his death  
had a fixed place of abode at the.....of.....  
in the said District of.....(or "had no fixed place of  
abode in Alberta, but had at such time property in the said District of  
.....") made and duly executed his last will and  
testament (with.....codicils), and did therein name  
.....of the.....of.....  
in, etc.....executor thereof (or named no executor  
therein), a true copy of which said last will and testament is hereunder  
written (or true copies of which said last will and testament, and....  
.....codicils are hereunder written), and be it further known  
that on the.....day of.....A.D. 19.....  
letters of administration, with the said will (and.....codicils)  
annexed of all and singular the property (or as the case may be, if  
grant is limited) of the said deceased were granted by the District Court  
of the District of.....to.....of  
the.....of.....in the District  
of.....(insert the character in which the grant is  
taken, and if executor has renounced, state the fact) he the said.....  
.....having previously been sworn well and faithfully  
to administer the same according to the tenor of the said will, by paying  
the just debts of the deceased, all taxes and duties payable in respect of  
his estate and the legacies contained in his will (or will and codicil) so  
far as the same shall thereunto extend and the law bind him, and by  
distributing the residue (if any) of the property according to law, and  
to exhibit under oath a true and perfect inventory of all and singular  
the property of the said deceased and to render a true and just account  
of his administration and to surrender these letters of administration  
whenever required by law so to do.

(SEAL)

.....  
Clerk of the Court.

#### FORM 16.

##### PROBATE.

Canada

Province of Alberta.

In the District Court of the District of.....  
Be it known that on the.....day of.....A.D. 19.....  
the last will and testament [or the last will and testament with (state  
number) codicils] of.....late of the.....  
of.....in the.....  
who died on or about the.....day of.....  
A.D. 19....., at....., and who at the time of his  
death had a fixed place of abode at.....in the said Dis-  
trict of.....(or as the case may be. If out of Alberta,



*add:* "but had at such time property in the said District of.....  
 ....") was proved and registered in the said District Court, a true  
 copy of which said last will and testament (with codicils, *if the case is*  
*so*) is hereunder written, and that the administration of all and singular  
 the property of the said deceased, and any way concerning his will was  
 granted by the aforesaid court to.....of  
 the.....of....., in  
 the.....the sole executor (*or as the case may be*)  
 named in the said will (*or codicil*), he having been first sworn well and  
 faithfully to administer the same by paying the just debts of the  
 deceased, all taxes and duties payable in respect of his estate and the  
 legacies contained in his will (*or will and codicils*) so far as he is there-  
 unto bound by law, and by distributing the residue (if any) of the  
 property according to law, and to exhibit under oath a true and perfect  
 inventory of all and singular the said property, and to render a just and  
 true account of his (*or their*) executorship and to surrender this grant  
 whenever required by law so to do.

(SEAL)

.....  
 Clerk of the Court.

FORM 17.

DOUBLE PROBATE.

Canada  
 Province of Alberta.

In the District Court of the District of.....  
 Whereas on the.....day of.....  
 A.D. 19....., the last will and testament (*or the last will and testa-*  
*ment and*.....*codicils*) of....., late  
 of the.....of.....in the  
 Province of Alberta, who died on or about the.....day  
 of.....A.D....., at.....and who  
 at the time of his death had a fixed place of abode at.....  
 in the Province of Alberta (*or as the case may be. If out of Alberta,*  
*add:* "but had at such time property in the said District of.....  
 ....") was proved and registered in the said District Court, a  
 true copy of which said last will and testament is hereunto annexed (*or*  
*true copies of which said last will and testament and codicils are here-*  
*unto annexed*), and that the administration of all and singular the  
 property of the said deceased, and any way concerning his will, was  
 granted by the aforesaid court to.....of.....  
 ....., in the Province of Alberta,.....  
 one of the executors named in the said will (*or codicil*). Power being  
 reserved of making the like grant to....., of  
 the.....of.....in the  
 Province of Alberta, the other executor named in the said will when  
 he should apply for the same. Be it therefore known that on the.....  
 .....day of.....A.D. 19....., the said  
 will of the said deceased was also proved, and that the like administra-  
 tion of all and singular the property of the said deceased, and any way  
 concerning his will, was granted to the said.....he  
 having been first duly sworn well and faithfully to administer the same  
 by paying the just debts of the deceased, all taxes and duties payable in  
 respect of his estate and the legacies contained in his will, (*or will and*  
*codicil*) so far as he is thereunto bound by law, and by distributing the  
 residue (if any) of the property according to law, and to exhibit under  
 oath a true and perfect inventory of all and singular the said property  
 and to render a just and true account of his executorship and to surren-  
 der this grant whenever required by law so to do.

(SEAL)

.....  
 Clerk of the Court.

## FORM 18.

## LETTERS OF GUARDIANSHIP.

## Canada

## Province of Alberta.

In the District Court of the District of.....  
Whereas A.B., of, etc., by application to the said court, did set forth that C.F., late of, etc., (*recite as in application*), and whereas the said .....has applied that he might be appointed guardian of the persons and estates of the said infants, pursuant to the Rules in that behalf, and that letters of guardianship might be granted to him by the said court.

Be it known that on the.....day of.....  
A.D. 19....., the said A.B. was appointed guardian of the persons and estate of them the said E.F. and G.H. and these letters of guardianship are accordingly granted by the said court to the said A.B., with power and authority to him to do all such acts, matters and things as a guardian may or ought to do, under and by virtue of any law in force in Alberta, relating to minors and their property, he the said A.B. having been first bound as required by law to perform the said trust and having been duly sworn to faithfully perform the trust of guardianship and that he will when his wards respectively become of the full age of twenty-one years, or whenever the said guardianship is determined, or sooner if thereto required by the said District Court or by a judge thereof, render to his wards, or to their executors or administrators a true and just account of all goods, moneys, interest, rents, profits, property, or other estate of the said wards which shall have come or which might but for his default have come into his hands or possession or under his control, and will thereupon without delay deliver and pay over to his said wards or to their executors or administrators the estate or the sum or balance of money which may be in his possession or under his control belonging to his wards, deducting therefrom and retaining such reasonable sum for his expenses and charges as shall upon an audit of his accounts be allowed by the court or a judge, and will surrender these letters of guardianship to the court whenever so required by the court or a judge thereof.

(SEAL)

Clerk of the Court.

## FORM 19.

## EXEMPLIFICATION OF LETTERS OF ADMINISTRATION.

## Canada

## Province of Alberta.

In the District Court of the District of.....

Be it known that upon search being this day made in the District Court of the District of.....it plainly appears that on the.....day of.....A.D....., letters of administration of all and singular the property of.....who died at.....on or about the.....of.....19....., and had at the time of his death a fixed place of abode at.....in the said District of.....were granted to.....of the.....of.....in the said Province of Alberta, and which said letters of administration now remain on record in the said District Court. The true tenor of the said letters of administration is in the words following, to wit: (*Here the letters of administration are to be recited verbatim*).

In faith whereof these letters testimonial are issued.

Given at the.....of.....in the Province of Alberta, this.....day of, etc.

(SEAL)

Clerk of the Court.

FORM 20.

Rule 6.

RENUNCIATION OF ADMINISTRATION (WITHOUT WILL).

In the District Court of the District of.....  
Whereas *A.B.*, late of the.....of.....  
in the District of.....deceased, died on or about  
the.....day of....., 19.....,  
intestate (a widower) and had at the time of his death a fixed place of  
abode at the.....of....., in the said  
District of.....and whereas I, *C.D.*, of the.....  
.....of.....in the Province of Alberta.....  
....., am his (*state relationship according to table of kin-  
ship*).

Now I, the said *C.D.*, do hereby expressly renounce all my right and  
title to letters of administration of the property of the said deceased.

In witness whereof I have hereunto set my hand and seal this.....  
day of....., 19.....

Signed, sealed and delivered by }  
the above named..... }  
in the presence of }

.....  
*C.D.* (L.S.)

*N.B.—An affidavit of execution required.*

FORM 21.

Rules 7 and 8.

RENUNCIATION OF PROBATE OR LETTERS OF ADMINISTRATION WITH WILL  
ANNEXED.

In the District Court of the District of.....  
Whereas....., late of.....  
in the District of.....deceased, died on or about  
the.....day.....19....., in the  
said District of.....and whereas he made and duly  
executed his will, bearing date the.....day of.....  
19....., (or will with.....codicils, the said will bearing  
date..... and the said codicils bearing date, etc.),  
and thereof appointed me executor (*or as the case may be*) as I am  
informed and believe.

Now I,....., do hereby declare that I have not  
intermeddled in the estate of the said....., deceased,  
and will not hereafter intermeddle therein, and I do hereby expressly  
renounce all my right and title to the probate and execution of the said  
will (and codicils if any) of the said deceased.

In witness whereof I have hereunto set my hand and seal this.....  
.....day of.....19.....

Signed, sealed and delivered }  
by the above named..... }  
in the presence of }

..... (L.S.)

*Note.—The above form may be varied when the renunciation is by the  
widow or other person entitled to administration with the will an-  
nexed. In each case there must be an affidavit of execution proving  
inter alia the age of the person executing the renunciation.*

*An executor who has intermeddled in an estate will not be allowed to  
renounce.*



## FORM 22.

EXEMPLIFICATION OF PROBATE OR OF ADMINISTRATION WITH THE WILL  
ANNEXED.

## Canada

## Province of Alberta.

In the District Court of the District of.....

Be it known that upon search being this day made in the District Court of the District of....., it plainly appears that on the.....day of.....19....., the last will and testament (with.....codicills) of.....late of the.....of....., in the District of....., in the Province of Alberta,....., deceased, who died at.....on or about the.....day of....., 19....., and had at the time of his death a fixed place of abode at the.....of.....in the Province of Alberta (*or as the case may be*) was proved by.....of the.....of.....in the Province of Alberta,....., the executor therein named, or that on the.....day of....., 19....., letters of administration with the last will and testament (and.....codicills) annexed, of the property of....., late of.....were granted to.....of the.....of.....in the Province of Alberta....., and which said probate (*or* letters of administration) now remains of record in the said District Court.

The true tenor of the said probate (*or* letters of administration with the will annexed) is in the words following, to wit: (*here let grant be recited verbatim*).....

In faith whereof these letters testimonial are issued.

Given at the.....of.....in the Province of Alberta, this.....day of.....19.....

(SEAL)

Clerk of the Court.

## FORM 23.

## Rule 13.

## ADVERTISEMENT—NOTICE OF APPLICATION FOR LETTERS OF GUARDIANSHIP.

*This advertisement is not to exceed 4 inches single column.*

## NOTICE.

In the District Court of the District of.....

In the matter of the guardianship of....., the infant child of.....late of the.....of.....Alberta,.....deceased.

Notice is hereby given that an application will be made to the above court at.....on.....the.....day of....., 19....., at 10 o'clock a.m., or so soon thereafter as the application can be heard for the grant of letters of guardianship of the above named infant to.....of the.....of.....the maternal uncle (*or as the case may be*) of the said infant.

Dated at.....this.....of.....19.....

*The applicant, or  
Solicitors for the applicant.*

FORM 24.

ADVERTISEMENT—NOTICE TO CREDITORS AND CLAIMANTS.

*This advertisement is not to exceed 4 inches single column in any newspaper.*

NOTICE.

In the estate of.....late of.....  
(occupation).....deceased.

Notice is hereby given that all persons having claims upon the estate of the above named.....who died on the..... day of.....A.D....., are required to file with.....by the..... day of.....a full statement duly verified of their claims and of any securities held by them, and that after that date the executors will distribute the assets of the deceased among the parties entitled thereto having regard only to the claims of which notice has been so filed or which have been brought to their knowledge.

Dated this.....day of....., 19.....

*Solicitor for the executors, or  
the executors, etc.*

Address.....

FORM 25.

Rule 61.

AFFIDAVIT OF AGENT AS TO FLIGHT AND CONDITION  
(DEPOSIT OF LIVING PERSON'S WILL)

In the District Court of the District of.....  
I, A.B., of....., solicitor, make oath and say  
as follows:

That the sealed packet that I produce for the purpose of the same being deposited for safe custody in the office of the clerk of the District Court of the District of.....and on the back of which I have signed my name, is now precisely in the same plight and condition as when received by me from the hands of C.D., of.....

Sworn at.....in the }  
Province of..... }  
day of..... }  
19..... }

Before me,

(Signed).....A.B.

FORM 26.

Rule 61.

AFFIDAVIT OF AGENT AS TO HANDWRITING  
(DEPOSIT OF LIVING PERSON'S WILL)

In the District Court of the District of.....  
I, A.B., of....., solicitor, make oath and say  
as follows:

1. That the signature.....at the foot of the endorsement on the packet containing the last will of C.D. and witnessed by me is in the proper handwriting of the said C.D. and was by him signed in my presence on the.....day of..... 19.....

2. That the signature thereto is in the proper handwriting of me, this deponent.

Sworn at.....in the }  
Province of..... }  
day of..... }  
19..... }

Before me,

(Signed).....A.B.

## RULES OF COURT

## FORM 27.

## Rule 61.

MINUTE OF RECEIPT OF LIVING PERSON'S WILL  
(DEPOSITED BY TESTATOR).

In the District Court of the District of.....  
 Personally appeared A.B., of....., who produced a  
 sealed packet which he declared to contain his last will and testament  
 .....with an endorsement thereon in the words and figures  
 following, to wit:—

"The.....day of....., 19.....  
 "This sealed packet contains the last will and testament of A.B., of  
 .....bearing date the.....day of  
 .....19....., and the same was brought into the  
 office of the clerk of the court of the District of.....  
 by me for safe custody, there to remain deposited until after my de-  
 cease, unless previously withdrawn by me in person," and subscribed  
 in his own handwriting as he then acknowledged. And he then declared  
 that he deposited the said sealed packet in the office of the clerk of this  
 court for safe custody, whereupon the said packet was received and  
 deposited in the office of the clerk of this court accordingly.

Dated the.....day of....., 19.....  
 (Sgd.).....W.F.  
*Clerk of the Court.*

## FORM 28.

## Rule 61.

MINUTE ON RECEIPT OF LIVING PERSON'S WILL  
(DEPOSITED BY AGENT).

In the District Court of the District of.....  
 Personally appeared A.B., of....., solicitor, who  
 produced a sealed packet which he declared to contain the last will and  
 testament of C.D., of....., with an endorsement  
 thereon in the words and figures following, to wit:—

"The.....day of....., 19.....  
 "This sealed packet contains the last will and testament (with.....  
 codicils) of me, C.D., of....., bearing date the  
 .....day of....., 19....., and  
 I authorize A.B. of....., solicitor, to deposit the  
 same for safe custody in the office of the clerk of the court of the  
 District of....., there to remain deposited until  
 after my decease, unless previously withdrawn by me in person," and  
 subscribed in his own handwriting as he then acknowledged.

And he then declared that he deposited the said sealed packet in the  
 office of the clerk of this court for safe custody, whereupon the said  
 packet was received and deposited in the office of the clerk of this court  
 accordingly.

Dated the.....day of....., 19.....  
 (Sgd.).....  
*Clerk of the Court.*

## FORM 29.

## MINUTE ON OPENING WILL DEPOSITED DURING TESTATOR'S LIFETIME.

In the District Court of the District of.....  
 In the estate of A.B., deceased.

Appeared before the undersigned clerk of the court of the District of  
 .....X.Y., of....., who alleged that A.B.,  
 late of.....died on.....the



.....day of....., 19....., and further alleged that he was the executor named in the will of A.B., bearing date the.....day of....., 19....., which will had been deposited in the office of the clerk of the court of the District of.....by the deceased in his lifetime for safe custody. The undersigned clerk of the court of the District of.....ordered that the envelope containing the said will be opened that the appearer might be sworn as the executor named therein.

Dated the.....day of....., 19.....  
(Sgd.).....W.F.  
Clerk of the Court.

FORM 30.

Rule 24.

OATH OF EXECUTOR FOR RE-SEALING PROBATE.

In the District Court of the District of.....  
In the matter of the estate of.....  
late of.....  
deceased.

I, (or we).....of.....  
make oath and say:

1. That the deceased died on the.....  
day of.....A.D. 192....., at the.....of  
.....in the.....of....., in  
which place.....had lived for.....years, and upwards, and  
where.....had.....fixed place of abode, and was domiciled, and  
that he had at such time property in the District of.....  
and that.....the.....executor named in  
.....will, .....and duly proved the  
same in.....on the.....day  
of....., A.D. 192.....

2. That.....applying for the.....of  
the will so granted to.....and herewith produced  
to be re-sealed in this court in respect of the property of the said  
deceased in the Province of Alberta.

3. That below is set forth to the best of.....knowledge,  
information and belief, a true inventory and valuation of all of the  
property of the said deceased in the Province of Alberta at the time  
of.....death, so far as.....can at present ascertain.

(Insert the inventory and valuation above referred to.)

Sworn before me at.....  
in the Province of Alberta, this.... }  
day of....., 192.... }

.....  
A Commissioner, Notary Public  
or Justice of the Peace.

FORM 31.

Rule 24.

OATH LEADING TO RE-SEALING LETTERS OF ADMINISTRATION.

In the District Court of the District of.....  
In the matter of the estate of.....  
late of....., deceased.

I, (or we).....of.....  
make oath and say:

1. That the deceased died on the.....day of.....  
A.D. 192.... at the.....of.....in the.....

of.....in which place.....had lived for.....years, and upwards, and was domiciled, and that ..he had at such time property in the said District of.....and that.....the administrator of.....estate, duly appointed by letters of administration granted to.....by the.....Court of.....the.....day of.....A.D. 192....

2. That.....applying for the letters of administration so granted to.....and herewith produced to be re-sealed in this court in respect of the property of the said deceased in the Province of Alberta.

3. That below is set forth to the best of.....knowledge, information and belief, a true inventory and valuation of all of the property of the said deceased in the Province of Alberta at the time of.....death, so far as.....can at present ascertain.

*(Insert the inventory and valuation above referred to.)*

Sworn before me at..... }  
in the Province of Alberta, this.... }  
day of....., 192.... }

.....  
*A Commissioner, Notary Public  
or Justice of the Peace.*

#### FORM 32.

##### Rule 30.

#### FORM OF RELEASE.

In the District Court of the District of.....  
In the matter of the estate of....., deceased.  
Know all men by these presents that I, .....of.....in the.....of.....do hereby acknowledge that I have received from the legal personal representative of the above named estate satisfactory accounting of, and full payment and satisfaction of all sums of money and benefits accrued to me from the said estate;

And therefore I do hereby release and forever discharge the said legal personal representative of the said estate, his heirs, successors, executors, administrators and assigns from all claims and demands against the said estate and the assets thereof, and touching and concerning the management and disposition of the said estate to the day of the date hereof.

In witness whereof I have hereunto set my hand and seal this .....day of.....A.D. 19....

Signed, sealed and delivered by the }  
said..... }  
in the presence of..... }

#### FORM 33.

##### Rule 30.

#### AFFIDAVIT OF ATTESTATION OF A RELEASE.

I, .....of.....in the.....of.....make oath and say:

1. That I was personally present and did see.....named in the (within or annexed) Release, who is personally known to me to be the person named therein, duly sign and execute the same for the purposes named therein;

2. That the same was executed at.....  
in the.....and that I am the subscribing witness  
thereto;

3. That I, .....know the  
said.....and.....is in my belief of the  
full age of twenty-one years.

Sworn before me at..... }  
in the..... }  
this .....day of..... }  
A.D. 19.... }

.....  
Signature.

SCHEDULE 2.

CLERK'S TARIFF.

The following fees shall be paid clerks for services and duties performed in probate, administration and guardianship matters:

1. Receiving, examining and filing papers entering, application for administration, guardianship or probate, attending Judge with same, giving and receiving all notices, issuing grant or letters and recording, where the value of all the property, real and personal, with the Province of Alberta, after deducting all debts and liabilities, against the same, is
 

(a) \$1,000.00 or under.....	\$10.00
(b) Over \$1,000.00 .....	10.00

 And in addition thereto \$2.00 per thousand or fraction thereof.
- 1a. On rejection of an application after the first, to be dispensed with in the discretion of the judge..... 1.00
- 1b. For setting special oaths or affidavits to lead to grant or re-sealing..... 1.00
2. Search..... .25
3. On every certificate not otherwise provided for..... .50
4. Exemplification, 5 folios..... 1.00
- 4a. Comparing for certifying copies of any documents, 5 folios 1.00
- Each additional folio or fraction thereof..... .10
5. Receiving, entering and filing caveat..... .50
6. For each notice of caveat..... .25
7. On every order, other than the fiat or order for issue of letters or grant..... .50
8. For copy or extract from any paper, document or record, per folio or fraction thereof..... .10
9. For taxing costs and granting certificates in non-contentious business ..... .50
10. On every audit by judge or clerk where the total of the accounts to be audited is under \$1,000.00, \$1.00 per hour, but not more than \$2.00 on any day.
11. On every audit by judge or clerk where such total exceeds \$1,000, but is under \$10,000, \$1.00 per hour, but not to exceed \$5.00 on any day.
12. On every audit by judge or clerk where such total exceeds \$10,000 but is under \$50,000, \$1.50 per hour, but not to exceed \$6.00 on any day.
13. On every audit by judge or clerk where such total exceeds \$50,000, \$2.00 per hour, but not to exceed \$10.00 on any day.
14. Ancillary letters and re-sealing grants—same as in case of original grant.
15. Depositing will of living persons and receipt for same.... 3.00
16. Drawing and entering minute of clerk..... .50
17. Withdrawal of will and incidental services..... 1.00



18. For services not herein provided for specially, the same fee as is provided for similar services by the general tariff of clerk's fees, contained in the Consolidated Rules of the Supreme Court.
19. Preparing copies of papers for use of Official Guardian, up to 10 folios..... \$ 2.00  
Every folio over 10, or fraction thereof..... .10  
(When copies are prepared by a solicitor, the fees shall be allowed to him by the clerk on taxation.)
20. Preparing Grant of Probate, Letters of Administration and Guardianship, up to 5 folios..... .50  
An additional 10c per folio for all over 5 folios.
21. For services under Rule 3, sub-clauses 2, 3 and 4, where the estate is of a net value of:  
(a) \$1,000.00 or under..... 1.00  
(b) Over \$1,000.00..... 2.00
22. For executing releases under Rule 951, subsection 3, each party..... 1.00

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#### SOLICITOR'S TARIFF.

##### COMMON FORM, PROBATE, ADMINISTRATION, GUARDIANSHIP.

Preparing all papers to lead, and attending issue of grant including succession duty affidavits and bond if required, and advertising for creditors where estate valued at—

(a) Under \$400.....	\$ 6.00
(b) \$400 and over and less than \$2,000.....	10.00
(c) \$2,000 and over and less than \$3,000.....	22.50
(d) \$3,000 and over and less than \$5,000.....	30.00
(e) \$5,000 and over and less than \$15,000.....	37.50
(f) \$15,000 and over and less than \$25,000.....	60.00
(g) \$25,000 and over and less than \$50,000.....	80.00
(h) \$50,000 and over and less than \$100,000.....	100.00
(i) \$100,000 and over.....	200.00

For passing accounts such amount as the judge may allow.

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#### DIVORCE RULES.

1. All actions for dissolution or nullity of marriage shall be commenced by statement of claim.
2. The statement of claim in divorce actions shall be served in the same manner as statements of claim in other actions are served.
3. The only parties to the action shall be the husband and wife unless a judge shall otherwise direct.
4. The rules relating to examination for discovery in the General Rules of Practice shall not apply to actions for divorce.
5. No decree absolute for a divorce shall be granted until at least three months after a *decree nisi*.
6. The application for a decree absolute may be made to any judge sitting in court upon at least five days' notice to the King's Proctor or the Attorney General and to the defendant if there has been a defence or demand for notice filed.
7. Except as provided by these Divorce Rules the general rules of procedure shall apply to divorce actions.

FORM OF DECREE NISI (DISSOLUTION).

In the Supreme Court of Alberta  
 .....Judicial District.  
 Before the Honourable } .....day, the.....  
 Justice..... } day of....., 19....

Between:

A.B., Plaintiff,  
 and

C.D., Defendant.

This action having come on for trial this day upon hearing the evidence adduced on behalf of the plaintiff (and the defendant, if any) and upon hearing counsel thereon—

It is adjudged and decreed that the marriage had and solemnized on the.....day of.....at .....between the plaintiff and the defendant be dissolved by reason that since the celebration thereof the said defendant has been guilty of adultery (and, if against the husband, the additional act or acts established) unless sufficient cause be shewn to the court why this decree should not be made absolute within.....months from the making thereof.

(Add any additional terms of the Judgment.)

.....  
 Clerk of the Court.

FORM OF DECREE ABSOLUTE.

(Title as in foregoing.)

Upon application made this day to the court by the plaintiff and upon hearing counsel, and it appearing that upon the.....day of.....it was adjudged and decreed (as above).....unless sufficient cause be shewn to the court why the said decree should not be made absolute within.....months from the making thereof and no such cause having been shewn—

It is adjudged and decreed that the said marriage be and the same is hereby absolutely dissolved.

.....  
 Clerk of the Court.

JUDICIAL DISTRICTS.

JUDICIAL DISTRICT OF PEACE RIVER.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the fifth meridian line with the north boundary of the province, thence southerly along the said fifth meridian line to the north boundary of the ninety-second township, thence westerly along the north boundary of the ninety-second townships to the line between ranges thirteen (13) and fourteen (14) west of the fifth meridian, thence southerly along the line between ranges thirteen (13) and fourteen (14) west of the fifth meridian to the north boundary of the eightieth townships, thence westerly along the north boundary of the eightieth townships to a line between ranges twenty-one (21) and twenty-two (22) west of the fifth meridian, thence southerly along the line between ranges twenty-one (21) and twenty-two (22) west of the fifth meridian to the north boundary of the sixty-fourth townships, thence westerly along the north boundary of the sixty-fourth townships to the west boundary of the province, thence northerly along the west boundary of the province to the north boundary of the province, and thence easterly along the north boundary of the province to the point of commencement.



GRANDE PRAIRIE SUB-JUDICIAL DISTRICT OF THE JUDICIAL DISTRICT  
OF PEACE RIVER.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the northern boundary of the sixty-fourth townships with the western boundary of the province, thence easterly along the said northern boundary of the sixty-fourth townships to the line between ranges twenty-one (21) and twenty-two (22) west of the fifth meridian, thence northerly along the said line between ranges twenty-one (21) and twenty-two (22) west of the fifth meridian to the north boundary of the eightieth townships, thence westerly along the said north boundary of the eightieth townships to its point of intersection with the Peace River in range twenty-five (25) west of the fifth meridian, thence up stream of the Peace River to the western boundary of the province, thence southerly along the western boundary of the province to the point of commencement.

JUDICIAL DISTRICT OF EDMONTON.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the north boundary of the fortieth townships with the east boundary of the province, thence northerly along the said east boundary of the province to the north boundary of the province, thence westerly along the north boundary of the province to the fifth meridian line, thence southerly along the said fifth meridian line to the north boundary of the ninety-second townships, thence westerly along the north boundary of the ninety-second townships to the line between ranges thirteen (13) and fourteen (14) west of the fifth meridian, thence southerly along the line between ranges thirteen (13) and fourteen (14) west of the fifth meridian to the north boundary of the eightieth townships, thence along the north boundary of the eightieth townships to the line between ranges twenty-one (21) and twenty-two (22) west of the fifth meridian, thence southerly along the line between ranges twenty-one (21) and twenty-two (22) west of the fifth meridian to the north boundary of the sixty-fourth townships, thence westerly along the north boundary of the sixty-fourth townships to the west boundary of the province, thence southerly along the west boundary of the province to the north boundary of the forty-fourth townships, thence easterly along the north boundary of the forty-fourth townships to the intersection thereof with the North Saskatchewan River, thence following the North Saskatchewan River down stream to the most easterly point in range twenty-six (26) west of the fourth meridian at which the north boundary of the fiftieth townships intersects the said river, thence easterly along the north boundary of the fiftieth townships to the line between ranges nineteen (19) and twenty (20) west of the fourth meridian, thence southerly along the line between ranges nineteen (19) and twenty (20) west of the fourth meridian to the north boundary of the forty-eighth townships, thence easterly along the north boundary of the forty-eighth townships to the line between ranges fifteen (15) and sixteen (16) west of the fourth meridian, thence southerly along the line between ranges fifteen (15) and sixteen (16) west of the fourth meridian to the north boundary of the forty-sixth townships, thence easterly along the north boundary of the forty-sixth townships to the line between ranges twelve (12) and thirteen (13) west of the fourth meridian, thence southerly along the line between ranges twelve (12) and thirteen (13) west of the fourth meridian to the north boundary of the forty-fifth townships, thence easterly along the north boundary of the forty-fifth townships to the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence southerly along the line between ranges ten (10) and eleven (11) west of the fourth meridian to the north boundary of the forty-fourth townships, thence easterly along the north boundary of the forty-fourth townships to the line between ranges seven (7) and eight (8) west of the fourth meridian, thence southerly along the line between ranges seven (7) and eight (8) west of the fourth meridian to the north boundary of the forty-second townships, thence easterly along



the north boundary of the forty-second townships to the line between ranges five (5) and six (6) west of the fourth meridian, thence southerly along the line between ranges five (5) and six (6) west of the fourth meridian to the north boundary of the fortieth townships, thence easterly along the north boundary of the fortieth townships to the eastern boundary of the province.

JUDICIAL DISTRICT OF WETASKIWIN.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the north boundary of the thirty-sixth townships with the east boundary of the Province of Alberta, thence northerly along the said east boundary of the province to the north boundary of the fortieth townships, thence westerly along the said north boundary of the fortieth townships to the line between ranges five (5) and six (6) west of the fourth meridian, thence northerly along the said line between ranges five (5) and six (6) west of the fourth meridian to the north boundary of the forty-second townships, thence westerly along the said north boundary of the forty-second townships to the line between ranges seven (7) and eight (8) west of the fourth meridian, thence northerly along the said line between ranges seven (7) and eight (8) west of the fourth meridian to the north boundary of the forty-fourth townships, thence westerly along the said north boundary of the forty-fourth townships to the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence northerly along the said line between ranges ten (10) and eleven (11) west of the fourth meridian to the north boundary of the forty-fifth townships, thence westerly along the said north boundary of the forty-fifth townships to the line between ranges twelve (12) and thirteen (13) west of the fourth meridian, thence northerly along the said line between ranges twelve (12) and thirteen (13) west of the fourth meridian to the north boundary of the forty-sixth townships, thence westerly along the said north boundary of the forty-sixth townships to the line between ranges fifteen (15) and sixteen (16) west of the fourth meridian, thence northerly along the said line between ranges fifteen (15) and sixteen (16) west of the fourth meridian to the north boundary of the forty-eighth townships, thence westerly along the said north boundary of the forty-eighth townships to the line between ranges nineteen (19) and twenty (20) west of the fourth meridian, thence northerly along the said line between ranges nineteen (19) and twenty (20) west of the fourth meridian to the north boundary of the fiftieth townships, thence westerly along the said north boundary of fiftieth townships to the North Saskatchewan River, thence westerly up stream along the North Saskatchewan River to the point where the north boundary of the forty-first townships intersects with the river, thence easterly along the said north boundary of the forty-first townships to its intersection with the Battle River, thence easterly down stream along the Battle River to its intersection with the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence southerly along the said line between ranges ten (10) and eleven (11) west of the fourth meridian to the north boundary of the thirty-eighth townships, thence easterly along the said north boundary of the thirty-eighth townships to the line between ranges seven (7) and eight (8) west of the fourth meridian, thence southerly along the said line between ranges seven (7) and eight (8) west of the fourth meridian to the north boundary of the thirty-sixth townships, thence easterly along the said north boundary of the thirty-sixth townships to the point of commencement.

JUDICIAL DISTRICT OF RED DEER.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the north boundary of the thirty-fourth townships with the west boundary of the Province of Alberta, thence easterly along the said north boundary of the thirty-fourth townships to its intersection with the Red Deer River in range twenty-

one (21) west of the fourth meridian, thence northerly up stream along the Red Deer River to the mouth of Tail Creek, thence northerly up stream along Tail Creek to Buffalo Lake, thence north-easterly along the eastern shore of Buffalo Lake to its intersection with the north boundary of section thirteen (13), township forty-one (41), range twenty (20), west of the fourth meridian, thence easterly along the north boundary of the said section thirteen (13) to the line between ranges nineteen (19) and twenty (20) west of the fourth meridian, thence northerly along the said line between ranges nineteen (19) and twenty (20) west of the fourth meridian to the north boundary of the forty-first townships, thence westerly along the said north boundary of the forty-first townships to its intersection with the North Saskatchewan River, thence northerly down stream along the North Saskatchewan River to its intersection with the north boundary of the forty-fourth townships, thence westerly along the north boundary of the forty-fourth townships to the west boundary of the province, thence southerly along the west boundary of the Province of Alberta to the point of commencement.

#### JUDICIAL DISTRICT OF STETTLER.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the north boundary of the thirtieth townships with the east boundary of the Province of Alberta, thence northerly along the said east boundary of the said province to the north boundary of the thirty-sixth townships, thence westerly along the said north boundary of the thirty-sixth townships to the line between ranges seven (7) and eight (8) west of the fourth meridian, thence northerly along said line between ranges seven (7) and eight (8) west of the fourth meridian to the north boundary of the thirty-eighth townships, thence westerly along the north boundary of the thirty-eighth townships to the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence northerly along said line between ranges ten (10) and eleven (11) west of the fourth meridian to the Battle River, thence westerly up stream along the Battle River to its intersection with the north boundary of the forty-first townships, thence westerly along the north boundary of the forty-first townships to the line between ranges nineteen (19) and twenty (20) west of the fourth meridian, thence southerly along said line between ranges nineteen (19) and twenty (20) west of the fourth meridian to the north boundary of section thirteen (13), township forty-one (41), range twenty (20), west of the fourth meridian, thence westerly along said north boundary of section thirteen (13) to the east shore of Buffalo Lake, thence south-westerly along the east shore of Buffalo Lake to the mouth of Tail Creek, thence southerly along Tail Creek to the Red Deer River, thence southerly down stream along Red Deer River to its intersection with the north boundary of the thirty-third townships, thence easterly along said north boundary of the thirty-third townships to the line between ranges thirteen (13) and fourteen (14) west of the fourth meridian, thence southerly along said line between ranges thirteen (13) and fourteen (14) west of the fourth meridian to the north boundary of the thirty-second townships, thence easterly along the said north boundary of the thirty-second townships to the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence southerly along said line between ranges ten (10) and eleven (11) west of the fourth meridian to the north boundary of the thirty-first townships, thence easterly along said north boundary of the thirty-first townships to the line between ranges six (6) and seven (7) west of the fourth meridian, thence southerly along said line between ranges six (6) and seven (7) west of the fourth meridian to the north boundary of the thirtieth townships, thence easterly along said north boundary of the thirtieth townships to the point of commencement.

#### SUB-JUDICIAL DISTRICT OF CAMROSE.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the north boundary of the thirty-sixth townships with the east boundary of the Province of Alberta,



thence northerly along the said east boundary of the said province to the north boundary of the fortieth townships, thence westerly along the said north boundary of the fortieth townships to the line between ranges five (5) and six (6) west of the fourth meridian, thence northerly along said line between ranges five (5) and six (6) west of the fourth meridian to the north boundary of the forty-second townships, thence westerly along the said north boundary of the forty-second townships to the line between ranges seven (7) and eight (8) west of the fourth meridian, thence northerly along the said line between ranges seven (7) and eight (8) west of the fourth meridian to the north boundary of the forty-fourth townships, thence westerly along the said north boundary of the forty-fourth townships to the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence northerly along the said line between ranges ten (10) and eleven (11) west of the fourth meridian to the north boundary of the forty-fifth townships, thence westerly along the said north boundary of the forty-fifth townships to the line between ranges twelve (12) and thirteen (13) west of the fourth meridian, thence northerly along the said line between ranges twelve (12) and thirteen (13) west of the fourth meridian to the north boundary of the forty-sixth townships, thence westerly along the said north boundary of the forty-sixth townships to a line between ranges fifteen (15) and sixteen (16) west of the fourth meridian, thence northerly along said line between ranges fifteen (15) and sixteen (16) west of the fourth meridian to the north boundary of the forty-eighth townships, thence westerly along said north boundary of the forty-eighth townships to the line between ranges nineteen (19) and twenty (20) west of the fourth meridian, thence northerly along said line between ranges nineteen (19) and twenty (20) west of the fourth meridian to the north boundary of the fiftieth townships, thence westerly along said north boundary of the fiftieth townships to the line between ranges twenty-one (21) and twenty-two (22) west of the fourth meridian, thence southerly along the said boundary line between ranges twenty-one (21) and twenty-two (22) to the north boundary line of forty-first townships, thence easterly along the said townships boundary line to the Battle River, thence easterly down stream along the Battle River to its intersection with the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence southerly along said line between ranges ten (10) and eleven (11) west of the fourth meridian to the north boundary of the thirty-eighth townships, thence easterly along the said north boundary of the thirty-eighth townships to the line between ranges seven (7) and eight (8) west of the fourth meridian, thence southerly along said line between ranges seven (7) and eight (8) west of the fourth meridian to the north boundary of the thirty-sixth townships, thence easterly along said north boundary of the thirty-sixth townships to the point of commencement.

JUDICIAL DISTRICT OF CALGARY.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the north boundary of the sixteenth townships with the west boundary of the Province of Alberta, thence easterly along the said north boundary of the sixteenth townships to the Bow River, thence south-easterly down stream of the Bow River to its most easterly intersection with the north boundary of the thirteenth townships, thence easterly along the said north boundary of the thirteenth townships to the line between ranges eleven (11) and twelve (12) west of the fourth meridian, thence northerly along the said line between ranges eleven (11) and twelve (12) west of the fourth meridian to the Red Deer River, thence north-westerly up stream of the Red Deer River to the north boundary of the thirty-fourth townships, thence westerly along the said north boundary of the thirty-fourth townships to its intersection with the west boundary of the Province of Alberta, thence south-easterly along the west boundary of the Province of Alberta to the point of commencement.



BASSANO SUB-JUDICIAL DISTRICT OF THE JUDICIAL DISTRICT  
OF CALGARY.

That portion of the Judicial District of Calgary described as follows:

Commencing at the intersection of the line between ranges twenty-one (21) and twenty-two (22) west of the fourth meridian with the north boundary of the sixteenth townships, thence easterly along the said north boundary of the sixteenth townships to the Bow River, thence south-easterly down stream of the Bow River to its most easterly intersection with the north boundary of the thirteenth townships, thence easterly along such north boundary of the thirteenth townships to the line between ranges eleven (11) and twelve (12) west of the fourth meridian, thence northerly along the line between ranges eleven (11) and twelve (12) to the Red Deer River, thence north-westerly up stream of the Red Deer River to its intersection with the north boundary of the twenty-sixth townships, thence westerly along the north boundary of the twenty-sixth townships to the line between ranges twenty-one (21) and twenty-two (22) west of the fourth meridian, thence south along the said line between ranges twenty-one (21) and twenty-two (22) west of the fourth meridian to the point of commencement.

JUDICIAL DISTRICT OF HANNA.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the north boundary of the thirty-third townships with the Red Deer River, thence south-easterly and easterly down stream of the Red Deer River to the east boundary of the Province of Alberta, thence north along the east boundary of the Province of Alberta to the north boundary of the thirtieth townships, thence westerly along the north boundary of the thirtieth townships to the line between ranges six (6) and seven (7) west of the fourth meridian, thence north along the said line between ranges six (6) and seven (7) west of the fourth meridian to the north boundary of the thirty-first townships, thence westerly along the north boundary of the thirty-first townships to the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence north along the said line between ranges ten (10) and eleven (11) west of the fourth meridian to the north boundary of the thirty-second townships, thence west along the north boundary of the thirty-second townships to the line between ranges thirteen (13) and fourteen (14) west of the fourth meridian, thence north along the said line between ranges thirteen (13) and fourteen (14) west of the fourth meridian to the north boundary of the thirty-third townships, thence westerly along the said north boundary of the thirty-third townships to the point of commencement.

JUDICIAL DISTRICT OF MEDICINE HAT.

That portion of the Province of Alberta bounded as follows:

On the east by the eastern boundary of the Province of Alberta; on the south by the southern boundary of the said province; on the north by the Red Deer River; and on the west by a line described as follows: Commencing at the intersection of the southern boundary of the Province of Alberta with the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence north following the said line between ranges ten (10) and eleven (11) west of the fourth meridian to the South Saskatchewan River, thence west up stream following the said South Saskatchewan River to its intersection with the northern boundary of the thirteenth townships, thence east along the said northern boundary of the said thirteenth townships to the line between ranges eleven (11) and twelve (12) west of the fourth meridian, thence north along said line between ranges eleven (11) and twelve (12) west of the fourth meridian to the Red Deer River.

JUDICIAL DISTRICT OF MACLEOD.

That portion of the Province of Alberta bounded as follows:

On the north by the northern boundary of the sixteenth townships; on the west by the western boundary of the Province of Alberta; on the

south by the southern boundary of the Province of Alberta; and on the east by a line described as follows: Commencing at the intersection of the northern boundary of the sixteenth townships with the line between ranges twenty-four (24) and twenty-five (25) west of the fourth meridian, thence southerly along the said line between ranges twenty-four (24) and twenty-five (25) west of the fourth meridian to the northern boundary of the twelfth townships, thence easterly along the northern boundary of the twelfth townships to the line between ranges twenty-three (23) and twenty-four (24) west of the fourth meridian, thence southerly along the line between ranges twenty-three (23) and twenty-four (24) west of the fourth meridian to its intersection with the Belly River, thence easterly down stream along the Belly River to the mouth of the St. Mary River, thence southerly up stream along the St. Mary River and Lees Creek to the intersection of the said Lees Creek with the southerly limit of the Blood Indian Reserve, thence westerly along the said southerly limit of the blood Indian Reserve to the line between ranges twenty-seven (27) and twenty-eight (28) west of the fourth meridian, thence southerly along the said line between ranges twenty-seven (27) and twenty-eight (28) west of the fourth meridian to the southern boundary of the Province of Alberta.

JUDICIAL DISTRICT OF LETHBRIDGE.

That portion of the Province of Alberta described as follows:

Commencing at the intersection of the southern boundary of the Province of Alberta with the line between ranges ten (10) and eleven (11) west of the fourth meridian, thence north along the said line between ranges ten (10) and eleven (11) west of the fourth meridian to the South Saskatchewan River, thence west up stream along the said South Saskatchewan River and the Bow River to the intersection of the Bow River with the north boundary of the sixteenth townships, thence west along the north boundary of the sixteenth townships to the line between ranges twenty-four (24) and twenty-five (25) west of the fourth meridian, thence southerly along the said line between ranges twenty-four (24) and twenty-five (25) west of the fourth meridian to the northern boundary of the twelfth townships, thence east along the northern boundary of the twelfth townships to the line between ranges twenty-three (23) and twenty-four (24) west of the fourth meridian, thence southerly along the line between ranges twenty-three (23) and twenty-four (24) to its intersection with the Belly River, thence easterly down stream along the Belly River to the mouth of the St. Mary River, thence southerly up stream along the St. Mary River and Lees Creek to the intersection of the said Lees Creek with the southerly limit of the Blood Indian Reserve, thence westerly along the said southerly limit of the Blood Indian Reserve to the line between ranges twenty-seven (27) and twenty-eight (28) west of the fourth meridian, thence southerly along the said line between ranges twenty-seven (27) and twenty-eight (28) west of the fourth meridian to the south boundary of the Province of Alberta, thence easterly along the south boundary of the Province of Alberta to the point of commencement.

TABER SUB-JUDICIAL DISTRICT OF THE JUDICIAL DISTRICT  
OF LETHBRIDGE.

That portion of the Judicial District of Lethbridge described as follows shall be known as the Taber Sub-Judicial District of the Judicial District of Lethbridge:

Commencing at north-east corner of township seven (7), range eleven (11) west of the fourth meridian, thence north on the line between ranges ten (10) and eleven (11) west of the fourth meridian to the South Saskatchewan River, thence westerly up stream along the said South Saskatchewan River and the Bow River to the intersection of the said Bow River with the northerly boundary of the sixteenth townships, thence westerly along the north boundary of the sixteenth townships to the line between ranges twenty (20) and twenty-one (21) west of the fourth meridian, thence southerly along the line between ranges twenty (20) and twenty-one (21) west of the fourth meridian



to the north boundary of townships eleven (11), thence easterly along the north boundary of townships eleven (11) to the line between ranges eighteen (18) and nineteen (19) west of the fourth meridian, thence southerly on the line between ranges eighteen (18) and nineteen (19) west of the fourth meridian to the north boundary of townships seven (7), thence easterly along the said north boundary of townships seven (7) to the point of commencement.

#### REGISTRATION DISTRICTS.

*Medicine Hat Registration District:* The boundaries of the Medicine Hat Registration District are the same as those of the Medicine Hat Judicial District.

*Taber Registration District:* The boundaries of the Taber Registration District are the same as those of the Taber Sub-Judicial District.

*Lethbridge Registration District:* The Lethbridge Registration District includes all of the Lethbridge Judicial District excepting thereout the Taber Registration District.

*Macleod Registration District:* The boundaries of the Macleod Registration District are the same as those of the Macleod Judicial District.

*Bassano Registration District:* The boundaries of the Bassano Registration District are the same as those of the Bassano Sub-Judicial District.

*Calgary Registration District:* The Calgary Registration District includes all of the Calgary Judicial District excepting that portion included in the Bassano Registration District.

*Hanna Registration District:* The boundaries of the Hanna Registration District are the same as those of the Judicial District of Hanna.

*Stettler Registration District:* The boundaries of the Stettler Registration District are the same as those of the Judicial District of Stettler.

*Red Deer Registration District:* The boundaries of the Red Deer Registration District are the same as those of the Judicial District of Red Deer.

*Camrose Registration District:* The boundaries of the Registration District of Camrose are the same as those of the Camrose Sub-Judicial District.

*Wetaskiwin Registration District:* The Wetaskiwin Registration District includes that portion of the Wetaskiwin Judicial District not included in the Camrose Registration District.

*Edmonton Registration District:* The Edmonton Registration District is the same as the Edmonton Judicial District.

*Grande Prairie Registration District:* The boundaries of the Grande Prairie Registration District are the same as those of the Grande Prairie Sub-Judicial District.

*Peace River Registration District:* The Peace River Registration District includes all that portion of the Peace River Judicial District not included in the Grande Prairie Registration District.

#### TARIFF UNDER EXTRA JUDICIAL SEIZURES ACT.

To the Clerk of the Supreme or District Court:

1. Every judge's or master in chamber's order under this Act \$ 1.00

To the Sheriff:

1. For receiving, entering and endorsing every warrant of distress or seizure.....	.50
2. For receiving, entering and endorsing every order.....	.50
3. Every return of all documents.....	.25
4. Every affidavit.....	.50



5. Fee on every service, if any.....	\$ .50
6. Every warrant to execute any extra-judicial process when given to a bailiff.....	.50
7. Every bond required to be taken to the sheriff for securing goods or for indemnity or other process.....	1.00
8. Every search not being by a party to the cause or his solicitor,.....	.25
9. Every certificate when required, whether under seal or not	.50
10. Notice of sale of goods.....	.75
Each copy not exceeding seven.....	.10
11. Levying distress.....	1.00
12. Man in possession, per day \$3.00. In case of the failure of the debtor to give his undertaking as bailee such sum as is necessary and reasonable in the opinion of the taxing officer or a judge.	
13. Appraisement, whether by one appraiser or more, two cents on the dollar on the value of the goods up to \$500, and one per cent. on the dollar for each additional \$500 or fraction thereof up to \$2,000, and one-half per cent. on all sums over that amount.	
14. All reasonable and necessary disbursements for advertising.	
15. Catalogue, sale, commission and delivery of goods, five per cent. on the net proceeds of the goods up to \$1,000, and one and one-half per cent. thereafter.	
16. On settlement being made after seizure and before sale, a minimum fee of \$1.00 on all sums under \$100.00; when the sum exceeds \$100.00, and does not exceed \$500.00, two and one-half per cent.; when the sum is over \$500.00 and does not exceed \$1,000.00, two and one-half per cent. for \$500.00, and one and a quarter per cent. for the balance up to \$1,000.00, and when the sum is over \$1,000.00, two and one-half per cent. for \$500.00, one and a quarter per cent. up to \$1,000.00, and one per cent. for the balance.	
17. Actual and necessary mileage, travelled and sworn to from the place where same is severally received, or the Sheriff's office (whichever is nearer) to the place where any seizure under the authority of any chattel mortgage, bill of sale, or in re-taking possession of goods under a hire receipt, or conditional sale agreement. (Where mileage actually travelled under instructions from plaintiff, or his solicitor, and no seizure made by reason of there being no goods liable to seizure, or by reason of wrong address given, actual expenses incurred, including mileage, to be paid by the party in fault).....	.20
18. All necessary and reasonable disbursements for removing and storing goods and removing and keeping live stock, and all other disbursements which in the opinion of the judge before whom a question as to the amount of the fees to be allowed under this Act may come for decision, are reasonable and necessary.	

TARIFF OF OFFICIAL COURT REPORTERS.

FEES.

The fees payable to the Court Stenographers shall be as follows:

1. For attendance to take evidence, other than before a court or judge, when no transcript required, per hour or portion thereof.....	\$ 2.00
2. For transcript of notes of evidence at a trial or before a Judicial Officer—	
(a) For first copy, per page.....	.40
(b) For each additional copy, per page.....	.15

3. For transcript of notes of examinations or of notes of evidence not included in item 2—
  - (a) For first copy (with file copy free) per page..... \$ .35
  - (b) For each additional copy, per page..... .15
4. For appeal books in the Supreme Court, seven copies of book, including pleadings, evidence and exhibits, indexed and bound, complete, per page..... .80
5. For appeal books in the District Court, six copies of book as in item 4, per page..... .55
6. For each copy of a judgment (with file copy free), per page Transcription of notes of evidence when required by the Department of the Attorney General or by the Trial Judge, to be furnished free. .25

The rate to be allowed for any transcription or work required to be done by reporters or shorthand writers and not provided for by this tariff shall be fixed by analogy thereto. These regulations and Tariff shall, as far as applicable, govern in criminal proceedings in the Supreme Court, the District Judges' Criminal Court and before Magistrates, Justices of the Peace and Coroners.

## LAND TITLES ACT.

### REGISTRARS' TARIFF OF FEES.

#### FEES ON GRANTS FROM THE CROWN.

1. Each certificate of title for land granted to a person or company who has obtained a patent under a homestead or under a homestead and pre-emption entry, or under Half-Breed land scrip or military bounty land scrip, in accordance with *The Dominion Lands Act* and amendments thereto shall be issued and a duplicate thereof shall be delivered or mailed to the person or company entitled thereto, free of charge.
2. In the case of other patentees the fee payable upon the issue of each certificate of title and duplicate, including the delivery or mailing thereof, to the person or company entitled thereto, shall be..... \$ 5.00

#### FEES ON APPLICATION TO BRING LAND UNDER THE ACT.

3. Each certificate of title issued in accordance with an application made under the provisions of section 27 of the said Act, where at the time of the issue of such certificate the patent is the only instrument in the hands of the registrar affecting the land, shall be issued, and a duplicate thereof shall be delivered or mailed to the person or company entitled thereto for a fee of..... 2.00
4. For certificate of title on an application to bring land under the Act in cases other than those provided for in the last item which shall include the fees to be paid to the assurance fund, and for the duplicate certificate of title and abstract all filings, searches and inspections—
  - (a) Where the value of the land does not exceed \$500..... 5.00
  - (b) Where the value is over \$500 and up to \$1,000..... 7.00
  - (c) For each additional \$500, or fraction thereof until the value reached is \$5,000, add..... 1.00
 And for each additional \$1,000 thereafter or fraction thereof add..... 1.00

#### FEES ON TRANSMISSIONS.

5. For certificate of title on a transmission, including fees for duplicate thereof and for registration, searches and all other services connected therewith, but not including fees payable to assurance fund..... 5.00

If the land transmitted is included in more than one certificate of title, for entering memorandum on each certificate of title and duplicate thereof after the first certificate

	\$ 1.00
6. For entering executor or administrator as transferee or proprietor of a mortgage on a transmission.....	2.00
7. For entering survivor or other person as proprietor in the case of a joint proprietorship..... (See, however, Item No. 39.)	1.00
8. For new certificate of title to registered female owner on her marriage, including duplicate thereof, and all filings, memorandums and services connected therewith.....	5.00
9. For a certificate of title to an assignee for the benefit of creditors, including duplicate thereof.....	3.00

FEES FOR REGISTRATION OR FILING.

10. For registering a transfer or vesting order and issuing a certificate of title thereon and duplicate thereof and including fees for memorandums, searches and inspections— (a) Where the value of the property does not exceed \$1,000 (b) Where the value of the property is over \$1,000 and does not exceed \$3,000..... (c) Where the value of the property is over \$3,000 and does not exceed \$5,000..... (d) On each \$1,000 or fraction thereof over \$5,000 and up to \$10,000..... (e) On each \$1,000 or fraction thereof over \$10,000 and up to \$25,000..... (f) On each \$1,000 or fraction thereof over \$25,000..... And in addition, the fees payable to the Assurance Fund, and such taxes as may be payable under The Unearned Increment Tax Act. (See Items Nos. 13 and 39.)	4.00 5.00 7.00 1.00 .50 .25
11. For registering or filing any lease (exclusive of the fee of \$2.00 for leasehold certificate of title) encumbrance, or charge (other than a mortgage), surrender or power of attorney, including all memorandums, searches and other services connected therewith..... (See, however, Item No. 13.) For every such encumbrance after the first.....	3.00 3.00
12. For registering or filing any certificate, order or decree of a court or judge, or any assignment or discharge; wholly or partially of a mortgage, encumbrance or charge; or a satisfaction of an annuity, or any other instrument affecting land other than those particularly specified in this tariff, but not including mechanics' liens or instruments under The Mechanics' Lien Act filed by or on behalf of a labourer within the meaning of the said Act, including all memorandums, searches, and other services connected therewith (See, however, Item No. 13.)	2.00
13. When any instrument registered deals with or affects land in more than one certificate of title, for each memorandum after the first memorandum.....	1.00
14. For filing each caveat and for preparing and mailing the notices in connection therewith..... Provided that on filing any caveat claiming an interest under an unregistered mortgage there shall be payable a fee equal to that which under paragraph 18 hereof would be payable if such mortgage were being registered.	3.00
15. For entering withdrawal of caveat.....	2.00
16. For every extra memorial required to be made in connection with the filing or withdrawal of a caveat.....	.50



17. For registering or filing writ of execution, for each Four Hundred Dollars (\$400.00) or fraction thereof of the amount of the execution; or registering or filing a satisfaction or withdrawal thereof, including all memoranda and other services..... \$ 1.00
18. For registering a mortgage (including all memorandums, searches and other services connected therewith) where the money secured does not exceed \$5,000..... 3.00
- On each \$1,000 or fraction thereof over \$5,000 up to \$10,000, a further fee of \$1.00; on each \$1,000 or fraction thereof, over \$10,000 up to \$50,000, a further fee of 50c.; and on each \$1,000 or fraction thereof, over \$50,000, a further fee of 25 cents.
- For the assurance fund twenty-five cents, or one-fortieth of one per cent. of the money secured by such mortgage or encumbrance, whichever is the greater.

## PLANS.

19. For registration of each plan of subdivision, exclusive of extra certificate of title..... 10.00
- And a further fee for each lot or separate parcel into which the land is proposed to be subdivided, as shown on plan, provided that minimum fee under this section for any plan of subdivision or re-subdivision shall be \$20.00..... 1.00
20. Registration of order cancelling or varying plan—
1. Where area is less than 20 acres..... 10.00
2. Where area is twenty acres or more..... 15.00
21. Receiving plan, profile or book of reference of railway right-of-way required to be deposited under any Railway Act..... 1.00
22. (a) For examination and approval for filing, plan under section 53, including approval of description contained in the transfer, or examination and approval of description by metes and bounds..... 5.00
- (b) For examination and approval for filing under Section 53(a) and 53(b), except Irrigation Plans..... 10.00
- (c) For examination and approval for filing of Irrigation Plans, no plan to include more than one section of land..... 4.00
- In addition, a further fee for every mile or portion thereof of right-of-way shown on plan filed under (b) or (c) of Item 22 ..... 2.00
23. Every blue print copy of plan or part of plan, per square foot..... .15
- Minimum fee..... 1.00
- District Registrar's certificate on same..... 1.00
- For each copy of every map, plan or tracing, other than a blue print, per hour of time occupied by person making the same..... 1.00
24. For all other services of surveyor, per hour..... 2.00
25. For each map or plan deposited under any other Act than The Land Titles Act or Railway Act..... 1.00

## GENERAL.

26. For taking each affidavit or solemn declaration..... .20
27. For each search for each lot or parcel of land or for any name..... .25
- For such search when made by mail..... .50
- Provided that where any search is required by any city, town, village, rural municipality or school district for assessment purposes in lieu thereof, there shall be payable the following fees:
- (a) For any number of searches not exceeding 10, per search..... .25

(b) For any number of searches, exceeding 10 and not exceeding 50:	
For the first 10, per search.....	\$ .25
Per search after the 10th.....	.10
(c) For any number of searches exceeding 50:	
For the first 10, per search.....	.25
For the next 40, per search.....	.10
Per search after the 50th.....	.05
28. For a general certificate as to decrees, orders, executions, or liens, for one name.....	1.00
And for each additional name.....	.50
29. For each certificate of charge.....	1.00
Provided that where the entries on such certificate exceed three in number, an additional fee of 50c for each additional three entries or number fewer than three entries shall be charged.	
30. For each abstract respecting land included in one certificate of title, or respecting each quarter-section for which certificate of title has not been granted, including all charges for searches.....	1.00
Provided that where the entries on such abstract exceed three in number, an additional fee of 50 cents for each additional three entries or number fewer than three entries, shall be charged:	
And provided that where any abstract is required by any city, town, village, rural municipality or school district for the purpose of a Tax Enforcement Return, there shall be payable the following fees:	
For the first ten, each.....	1.00
For the next forty, each.....	.50
For each one after fifty.....	.25
31. For production of each instrument filed or registered.....	.25
32. For returning the documents of title deposited in support of an application on withdrawal or rejection of any application for certificate of title.....	1.00
33. For certified copy of or extract from any registered instrument or instruments otherwise in the custody of the Registrar, per first folio of 100 words.....	1.00
For every folio, or part of folio after first.....	.25
34. For each certificate and reference to a court or judge, excepting a reference made under Section 113 of <i>The Land Titles Act</i> .....	2.00
35. For attending a court or judge on reference or on hearing of any petition or on any proceeding or on producing any document on any application or proceeding before a court or judge, for each hour.....	2.00
36. Where a certificate of title or duplicate thereof has been lost or destroyed, for perusing proof of loss and settling notice for publication and for all other services, excepting new certificates of title.....	2.00
37. For a certificate of title or duplicate issued to replace one worn out, filled up, destroyed or lost.....	2.00
38. For consolidating two or more certificates of title.....	2.00
For each memorial of cancellation after the first two.....	.50
39. For certificate of title issued on any instrument not otherwise provided for, and for duplicate certificate.....	2.00
40. If more than one certificate of title is required upon the same instrument, for each certificate with duplicate thereof after the first certificate.....	2.00
41. On each correction in a certificate of title, including examination of the evidence.....	1.00
42. On rejection of each instrument presented for registration, to be charged in the discretion of the Registrar.....	1.00
43. For each certificate signed by the Registrar, Deputy Registrar, or Acting Registrar and authenticated by the Registrar's official seal, and not otherwise provided for.....	.25

44. For filing notice of exercising powers of sale in mortgage and instructions as to service.....	\$ 2.00
45. Filing withdrawal of notice of default.....	1.00
46. Order for substitutional service.....	2.00
47. Application for order for sale.....	5.00
48. Every other application to the Registrar relating to sale and foreclosure proceedings.....	1.00
49. Registrar's order confirming sale.....	2.00
50. Application to register transfer from mortgagee.....	2.00
51. Application for foreclosure.....	5.00
52. Registrar's order <i>nisi</i> .....	3.00
53. Registration of transfer from mortgagee*(the ordinary fees for registering a transfer including assurance fund fee and increment tax).	
54. Order for foreclosure including certificate of title, the ordinary fees for registering a transfer including assurance fund fees and increment tax.	
55. When the amount involved in any proceeding under section 62a is—	
(a) Over \$2,500.00 and does not exceed \$5,000.00, the fees shall be one and one-half times the amounts set out.	
(b) When it is over \$5,000.00 the fees shall be double the said amounts.	
56. For services not herein specified, there shall be exacted the fees required to be paid for similar services.	

## ASSURANCE FUND FEES.

NOTE.—In addition to the above fees there is payable to the assurance fund on the registration upon every absolute transfer of land after the issue of the first certificate of title therefor, one-fifth of one per cent. of the value of the land transferred if such value amounts to or is less than five thousand dollars, and one-tenth of one per cent. on the additional value where such value exceeds five thousand dollars; and upon every subsequent transfer upon the increase of value since the granting of the last certificate of title one-fifth of one per cent. if the increase is not more than five thousand dollars, and one-tenth of one per cent. on any excess over such five thousand dollars, such valuation in each case to be ascertained by the oath or affirmation of the applicant, owner, or person acquiring the land, or of such other person as the registrar believes to be acquainted with the value of the land and whose oath or affirmation he is willing to accept.

## LAND TITLES ACT.

## FORECLOSURE AND SALE PROCEDURE.

## SOLICITORS' TARIFF.

1. For all proceedings before a judge or the court of appeal the same fees as would be allowed by the tariff of costs of the Supreme Court for similar services.	
2. For all proceedings on sale or foreclosure of mortgages under the said Act—	
(a) Drawing, serving and registering notice of sale and foreclosure under section 62a, inclusive of all instructions and attendances.....	\$13.00
(b) Advertising sale and all services connected therewith, including all attendances, revising proof, etc.....	19.50
(c) On sale of mortgaged premises under power of sale, including all instructions, attendances at sale and all other attendances and services up to completion of sale, or abortive sale.....	26.00



- (d) Application for confirmation of sale or for foreclosure after abortive sale including declarations, attendances and all other services including drawing transfer or order and all necessary documents..... \$ 32.50
- (d) 1. Application for foreclosure when foreclosure not granted but further notice required by the registrar under subsection (15) of section 62a..... 13.00
- (e) Actual and necessary disbursements when verified by statutory declaration, including auctioneer's fee, which should not in any case be more than \$20.00 for each sale or \$10.00 for an abortive sale unless under exceptional circumstances, and ten cents a mile necessarily travelled to and from place of sale in the discretion of the registrar.

The above fees are prescribed for sale and foreclosure of securities where the amount secured is \$1,000.00 to \$2,500.00.

When the amount secured is—

- (a) Less than \$1,000, three-fifths of above scale;
- (b) Over \$2,500 and up to \$5,000, one and one-half the above scale;
- (c) Over \$5,000, double above scale shall be allowed.

# REGISTRARS' TARIFF.

## UNDER THE TAX RECOVERY ACT, 1922.

1. For filing Caveat under Section 7..... \$ 1.00
2. For withdrawal of Caveat where the same has been lodged through error, mistake or misdescription, each Title..... .50
- In other cases, each Title..... 1.00
3. For registration of Transfer under Section 12..... 1.00
4. For issuing each Certificate of Title and Duplicate thereof 1.00

## UNDER THE TAX RECOVERY ACT, 1919.

5. For registering memorandum under Section 31, Subsection 3..... 1.00
6. For registration of Transfer to a municipality..... 1.00
7. For issuing Certificate and Duplicate Certificate to a municipality..... 1.00
8. For registering Certificate of Redemption under Section 37, including one cancellation..... 1.00
- For each additional cancellation..... .50
9. For registering each Transfer issued by or to a municipality under the provisions of An Act respecting Subdivided and Other Property, being Chapter 22 of the Statutes of 1919, or pursuant to an order of the Board of Public Utilities under Part VIII of The Public Utilities Act, 1923, including the issuing of a Certificate of Title thereon, and Duplicate thereof, including fees for memoranda, searches and inspection ..... .50
10. For registering the Order cancelling a subdivision, including the cancellation of the plan and issuing each Certificate of Title to a municipality, and duplicate thereof..... 1.00

## GENERAL.

11. When any of the foregoing instruments deals with or affects land in more than one Certificate of Title:
- For each memorandum after the first memorandum up to 100..... .25
- For each memorandum over 100..... .10

Except as hereinbefore provided, fees shall be payable by others than municipalities, according to the tariff provided under *The Land Titles Act* for similar services rendered by the Registrars.

#### TARIFF OF COSTS UNDER THE OFFICIAL GUARDIAN ACT.

1. Perusal and examination of papers concerning any estate—  
On application for probate or administration..... \$ 3.00  
Fee on perusal of papers—  
Served on Official Guardian in connection with the passing of accounts where attendance before judge is not deemed necessary..... 3.00
2. Where in the opinion of the Official Guardian filing of caveat is necessary for the protection of infants, such fee in connection therewith as may be proper under the circumstances not exceeding \$10, exclusive of disbursements.
3. Commission on all moneys received by Official Guardian by reason of his acting as administrator or guardian or trustee..... 5%
4. Where Official Guardian advances moneys for the benefit of any estate from the funds of any other estate or from moneys in hand to the credit of the Official Guardian Account, he shall be entitled to charge such rate of interest as seems to him reasonable.
5. Where any estate is administered by the Official Guardian, and moneys are held, collected or distributed for the benefit of dependents residing in Alberta of any member of the Overseas Military Forces of Canada 1914-1919 or any member of the Military Forces of Great Britain or any of the Allies during the War, or where in the opinion of the Official Guardian by reason of the peculiar circumstances of the case the collection of the costs herein provided for would cause great hardship and injustice to individuals, the said costs may, under the provisions of Section 51 of *The Treasury Department Act* in that behalf be reduced to such amount as to the Official Guardian may seem just, and may in extreme cases be remitted altogether.

#### OFFICIAL GUARDIAN—REGULATIONS AND TARIFF.

##### LAND TITLES ACT, SEC. 111(a).

##### RE ESTATES WHERE INFANTS ARE CONCERNED.

Material required to be submitted is as follows:

1. Declaration by Executor or Administrator, or some one conversant with the facts, setting out—
  - (a) Residence of deceased at time of death, date of death, and Court out of which probate or administration was issued, also date on which issued.
  - (b) Material change, if any, in estate from that shown by papers on file in Succession Duties Department.
  - (c) Particular reasons for selling or mortgaging land, such as Agreement for Sale made prior to death, mortgage, threat of foreclosure or arrears of taxes, also in case of sale evidence that price is a fair one.
  - (d) The Transfer to be endorsed with consent.
2. Fee of \$3.00.

RE ESTATES WHERE CERTIFICATE IS ASKED FOR—NO INFANTS  
BEING INTERESTED.

Material required is as follows:

1. Declaration by Executor or Administrator, or some one conversant with the facts, setting out:
  - (a) The name of deceased, date of issue of grant of Probate or Letters of Administration, and Court out of which issued.
  - (b) That there are no infants interested in the land referred to, or in the estate of deceased, (as the case may be).
2. Fee of \$3.00.

SUCCESSION DUTIES ACT.

EXAMINATION FEES.

The Schedule of the examination fees which must accompany the affidavit is as follows:

Where the net values of the whole estate of the deceased (both within and without the Province)—

	Fee.
Does not exceed \$3,000.....	\$ 1.00
Exceeds \$3,000, and does not exceed \$5,000.....	2.00
Exceeds \$5,000, and does not exceed \$10,000.....	3.00
Exceeds \$10,000, and does not exceed \$25,000.....	4.00
Exceeds \$25,000, and does not exceed \$100,000.....	5.00
Exceeds \$100,000, and does not exceed \$200,000.....	7.00
Exceeds \$200,000.....	10.00

CERTIFICATES OF DISCHARGE.

The fee for a certificate of discharge in any estate is \$1.00.

Where there is property in both the North and South Alberta Land Registration Districts, on request this certificate will be issued in duplicate without extra charge if the request is made at the time of application for original certificate.

Search of departmental files.....	\$ .25
Copies of extracts from documents filed with or issued by the department, per folio of 500 words or less.....	1.00
Each additional 500 words or any part thereof.....	1.00
Certificate of Deputy Provincial Treasurer to such copy.....	1.00
Examination of supplementary affidavit covering property omitted from the original affidavit, or amendment in description of property in the original affidavit.....	1.00
Second or any further duplicate receipt for payment of succession duties.....	.25

TARIFF OF FEES UNDER THE PUBLIC UTILITIES ACT

Edmonton, Wednesday, May 9, 1923.

Pursuant to the provisions of Section 49 of The Public Utilities Act, 1923, His Honour the Lieutenant Governor, by and with the advice of the Executive Council, has been pleased to order that the following Tariff of Fees be and is hereby approved and that the same take effect on and from July 1st, 1923:

For every certified copy of any order or decision of the Board other than copies issued to the applicant and to the parties interested at the time of the making of such order, and where the order comprises not more than 6 folios.....	\$ 1.00
For each additional folio.....	.10
But in no case to exceed in all.....	3.00



With every application for the approval or granting of any franchise.....	\$ 5.00
In contentious matters under Part 2 of The Public Utilities Act requiring a hearing and where the proceedings have not been instituted on the Board's own motion, there shall be paid to the Board a sum of \$15.00 for each day or fraction thereof over one-half day, and the sum of \$10.00 for half a day or fraction thereof occupied by the hearing.....	15.00 10.00
With every application for the separation of land from a city, town or village, or for such alternative relief as is provided under Part 6 of The Public Utilities Act.....	3.00
Where such application involves more than one parcel of land, a further fee for each additional parcel of.....	2.00
With every application for the compromise of tax arrears....	3.00
With every application for the amendment or cancellation of a registered subdivision plan.....	2.50
Upon every order for the cancellation or amendment of a registered plan where the land covered by the order for cancellation or amendment comprises over 5 acres, and under 20 acres.....	3.00
Where the land covered by the order for cancellation or amendment comprises 20 acres and under 40 acres.....	5.00
Where the land covered by the order for cancellation or amendment comprises 40 acres or more.....	7.50
Where the order of the Board vests in the applicant lots or parcels of land owned by other parties, there shall be paid by the applicant in addition a fee of 25c. for each lot or parcel so vested in the applicant.....	.25

## RULES RESPECTING CRIMINAL APPEALS.

Under Sections 1012 to 1021 (c) of *The Criminal Code*.

**1.** Every notice of appeal, and every notice of an application for leave to appeal, shall be signed by the appellant, his counsel or agent and shall be directed to "The Registrar of the Appellate Division of the Supreme Court."

**2.** The notice (whether of appeal, or of an application to the Court of Appeal, or to a judge thereof for leave to appeal) shall set forth the offence of which the appellant was convicted, the date of the conviction and of sentence, and the place where the trial was held, the nature of the court which made the conviction, and the sentence passed upon the appellant; shall state whether the appellant desires to be present in person on the hearing of the appeal; and shall specify the nature of the order which the appellant intends to ask the court to make and the reasons therefor; but the court may make any order allowed by law, notwithstanding that it is not asked for in the notice, or that proper reasons are not stated therein. It is to be noted that the appellant may, in his notice, in the cases referred to in section 1014 (4) of *The Criminal Code*, request that if a new trial is granted, he be tried by a jury.

**3.** If an application for leave to appeal is granted by the Court of Appeal, or a judge thereof, no further notice of appeal shall be necessary; but, upon the granting of the application, the court or judge may give such directions as to the hearing of the appeal as may be deemed necessary.

**4.** Unless otherwise ordered by the Court of Appeal or a judge thereof, all appeals and applications to the Court of Appeal, or a judge thereof, for leave to appeal from any conviction or sentence made in the following Judicial Districts, viz.: Macleod, Lethbridge, Calgary, Medicine Hat, Hanna, and Red Deer—shall be heard at Calgary, and all other such appeals and applications shall be heard at Edmonton.

**5.** The appellant shall, if his application is to the Court of Appeal or a judge thereof, within one calendar month from the date of the conviction (if the appeal is from the conviction only), or from the date of the sentence (if the appeal is from both conviction and sentence or from the sentence only), send by prepaid registered mail three copies of the notice addressed to "The Registrar, Appellate Division, Supreme Court, Court House, Edmonton" (in the case of appeals to be heard at Edmonton) or Calgary (in the case of appeals to be heard at Calgary); or he may within the said period file three copies of the notice in the office of the said Registrar at Edmonton or Calgary. The Registrar shall retain and file one copy, and shall forthwith after the receipt thereof send one copy by

prepaid registered mail to the Attorney General at Edmonton, and the third copy by prepaid registered mail to the Clerk of the Court before whom the appellant was tried, or to the magistrate who convicted him.

6. An application to the trial court, or judge or magistrate presiding thereat, for a certificate under section 1013 (1) (b) may be made *ex parte*; but such court, judge, or magistrate may, if he thinks proper, require notice of the application for the certificate to be given to the Attorney General. If the certificate is granted, the same with a copy thereof shall be forwarded to or filed with the Registrar along with the regular notice of appeal, and the Registrar shall forward the copy to the Attorney General along with the copy of the notice of appeal. If the court judge or magistrate requires notice of an application for such certificate to be given, a copy of such notice shall be forwarded to or filed with the Registrar at Calgary or Edmonton, as the case may be. The application for such certificate shall be made within one calendar month after the date of the conviction; but, if the trial court or judge or magistrate thereof requires notice of the application for the certificate to be given, the notice may be given within two clear days after the first application to such trial court judge or magistrate and may be returnable at such time as the court, judge, or magistrate may fix, notwithstanding that the calendar month may have elapsed. If the certificate is granted, the appellant shall have two clear days after the granting of the same within which to mail or file his notice of appeal, notwithstanding that the calendar month may have elapsed; but otherwise the notice may be mailed or filed at any time before the expiration of the said period.

7. If the Attorney General, or the Counsel for the Crown at the trial, desires to appeal under section 1013 (2) of *The Criminal Code* against the sentence imposed, he shall within one calendar month after the date of the sentence file a notice of his application for leave to appeal with the Registrar, and shall also serve a copy thereof upon the person convicted by forwarding the same to the warden or gaoler in whose custody the convicted person is, and such warden or gaoler shall forthwith hand the said copy to the person convicted. Such service by the warden or gaoler upon the person convicted shall be made within the said period of one calendar month after the date of the sentence. A certificate purporting to be signed by the warden or gaoler, of the date upon which such service was made, shall be sufficient proof of such service.

8. (1) Immediately after the filing of a notice of appeal or of an application for leave to appeal, the Registrar shall procure the material provided for by section 1020 of *The Criminal Code*, including the opinion of the trial judge or magistrate upon the case.

(2) The trial judge or magistrate shall upon receiving a



request from the Registrar give such report as to his opinion upon the case as he may think proper to make, and shall also (if so requested by the judge presiding at the hearing of any appeal, or application for leave to appeal) furnish in writing to the Court of Appeal his opinion upon any point of the case referred to in such request.

(3) The production of a copy of the judge's or magistrate's notes of the trial, verified by his signature, shall be considered by the Court of Appeal as a sufficient compliance with the requirements of section 1020 (1) of *The Criminal Code* with respect to the judge's or magistrate's notes of the trial.

(4) In the case of shorthand notes of evidence, a certificate as to the correctness thereof, signed by the shorthand reporter who made or extended the said notes, shall be *prima facie* proof of the accuracy of the said notes and transcript thereof.

**9.** (1) No time or place for the hearing need be stated in any notice of appeal, or of application for leave to appeal; but the Registrar shall forthwith after the receipt of the notice (other than a notice to a judge for leave to appeal from a sentence) enter the case on the list of appeals for the next ensuing sittings of the Court, and at such sittings all directions may be given as to the hearing of the appeal or application.

(2) Where the application is to a judge of the Court of Appeal for leave to appeal from the sentence, the applicant shall, within seven days after filing his notice, apply to a judge for an appointment for the hearing of the application; and the judge in making the appointment shall give directions as to its service, and the application may be heard by any judge of the Court of Appeal.

**10.** The charges which may be made under section 1020 (3) of *The Criminal Code* for copies of the notes of evidence shall be the same as those which are now or may be from time to time fixed in regard to civil cases in the Supreme Court or in the magistrates' Courts respectively.

**11.** Any convicted person may present his argument in writing if he so desires by filing the same with the Registrar at any time before the day fixed for the hearing.

**12.** The Attorney General, if he desires to be heard upon any appeal or application, shall forthwith after receipt of the notice from the Registrar, notify the Registrar of the name of the counsel by whom he will be represented.

**13.** A notice under section 1018 (2) of *The Criminal Code* of an application to extend the time for appealing, or for applying for leave to appeal, shall contain the same information as required by Rule 2, and shall be given in the same way and dealt with by the Registrar, and proceeded with in the

same manner as a notice of appeal or of application for leave to appeal is directed to be given, dealt with, and proceeded with by the foregoing rules.

**14.** If the Attorney General or the convicted person desires to call further evidence upon the hearing of the appeal, the attendance of any witness or the production of any document may be obtained in the same way as that provided for by the Rules of the Supreme Court in civil matters, and all the provisions of such rules so far as they are applicable shall apply to the production of evidence upon an appeal.

**15.** With regard to any matter not provided for in these rules, the rules of the Court of Criminal Appeal in England shall be applicable *mutatis mutandis*, and so far as capable of being applied in Alberta to appeals under *The Criminal Code*.

**16.** A sufficient number of copies of these rules shall be prepared by the Registrar at Edmonton and sent to every keeper of a provincial gaol in Alberta, and to the Warden of the Penitentiary at Prince Albert; and the Registrar shall therewith also send to said gaolers and warden a copy of section 1021 (b) (3) of *The Criminal Code*, and the said gaolers and warden shall furnish a copy of these rules to any convicted person in his custody who asks for the same.

**17.** Pending the preparation of proper forms, any form of notice which contains substantially the information required by Rules 2 and 12 shall be sufficient.

**18.** The Clerk of every court before whom a person has been tried and convicted, and every magistrate who has convicted any person under Part XVI of *The Criminal Code*, shall furnish to the Attorney General and to the Counsel who acted for the Crown at the trial, whenever requested so to do, certified copies of such documents, exhibits, and other things connected with the proceedings, being in his custody or control, as they may require for the purposes of their duties in respect to appeals and applications for leave to appeal.

**19.** (1) All documents, exhibits, or other things connected with the proceedings on the trial of any person in the Supreme Court or a District Judge's Criminal Court who has been convicted shall, subject to the provisions of sub-sections (2), (4) and (5) hereof, be retained by the Clerk of the trial court in his possession, or, in the case of chattels of inconvenient size, in the possession of the sheriff under the Clerk's direction, for a period of one calendar month after the date of the sentence, and thereafter shall continue to be so retained until a fiat by a judge of the Court in which he was tried has been made for the disposition of the same.

(2) The judge or magistrate who presided at the trial of any person, or any judge of the Court in which he was tried, may



at any time after the trial make a special order as to the custody or conditional release of any such documents, exhibits, or other things as the special circumstances or special nature thereof may make desirable and proper, and upon such terms as he may impose.

(3) A magistrate presiding at a trial under Part XVI of *The Criminal Code* shall, subject to the provisions of subsections (2), (4) and (5) hereof, retain all documents, exhibits, or other things connected with the trial of any person convicted at such trial; or in the case of chattels of inconvenient size shall direct them to be retained by the proper police officers for thirty-five days after the sentence, unless in the meantime an order has been made by a judge of the Supreme Court or a local judge of the Supreme Court respecting the custody and control of the same.

(4) The Clerk of the Court at which any person was tried or the magistrate before whom he was tried under Part XVI of *The Criminal Code* may at any time after the trial, upon having filed with him the written consent, whether absolute or upon terms, of the counsel who acted for the Crown at the trial and of the counsel who acted for the accused (or, if the accused was not represented by counsel, of the accused)—personally deliver any document, exhibit or other thing produced at the trial to the person producing the same.

(5) Subject to the provisions of subsection (2) hereof the Clerk of every Court before which a person has been tried and convicted and every magistrate who has convicted any person under Part XVI of *The Criminal Code* shall, after he has received from the Registrar a copy of a notice of appeal or of an application for leave to appeal upon the request of the Attorney General (or his agent, or of the convicted person, or his counsel, or of the Registrar) forward by registered mail to the Registrar at Edmonton, or Calgary, as the case may be, all documents, exhibits, and other things used or produced at the trial which are in his custody or control except such things as cannot be conveniently sent by mail.

**20.** A judge or magistrate who after a conviction makes any order for the restitution of any property to any person or any order under sections 795, 1048, 1049 or 1050 of *The Criminal Code*, shall, upon making such order, make such further order as he may think proper for securing the safe custody of any such property or of any money referred to in any such order for the period during which the operation of such order of restitution is suspended by virtue of the provisions of section 1017 of *The Criminal Code*, and shall also make such order as he may think proper for securing the safe custody of any property which, by virtue of the provisions of section 1050 subsection (1) of *The Criminal Code*, must be restored to its owner or his representative pending the suspension of the operation of said subsection.



**21.** In these rules the word "magistrate" shall include any police magistrate or any two justices of the peace acting under Part XVI of *The Criminal Code*.

Promulgated at the sitting of the Appellate Division of the Supreme Court of Alberta held at Calgary the 27th day of September, A.D. 1923.

D. L. SCOTT, C.J.

CHAS. A. STUART, J.A.

N. D. BECK, J.A.

J. D. HYNDMAN, J.A.

A. H. CLARKE, J.A.



























































































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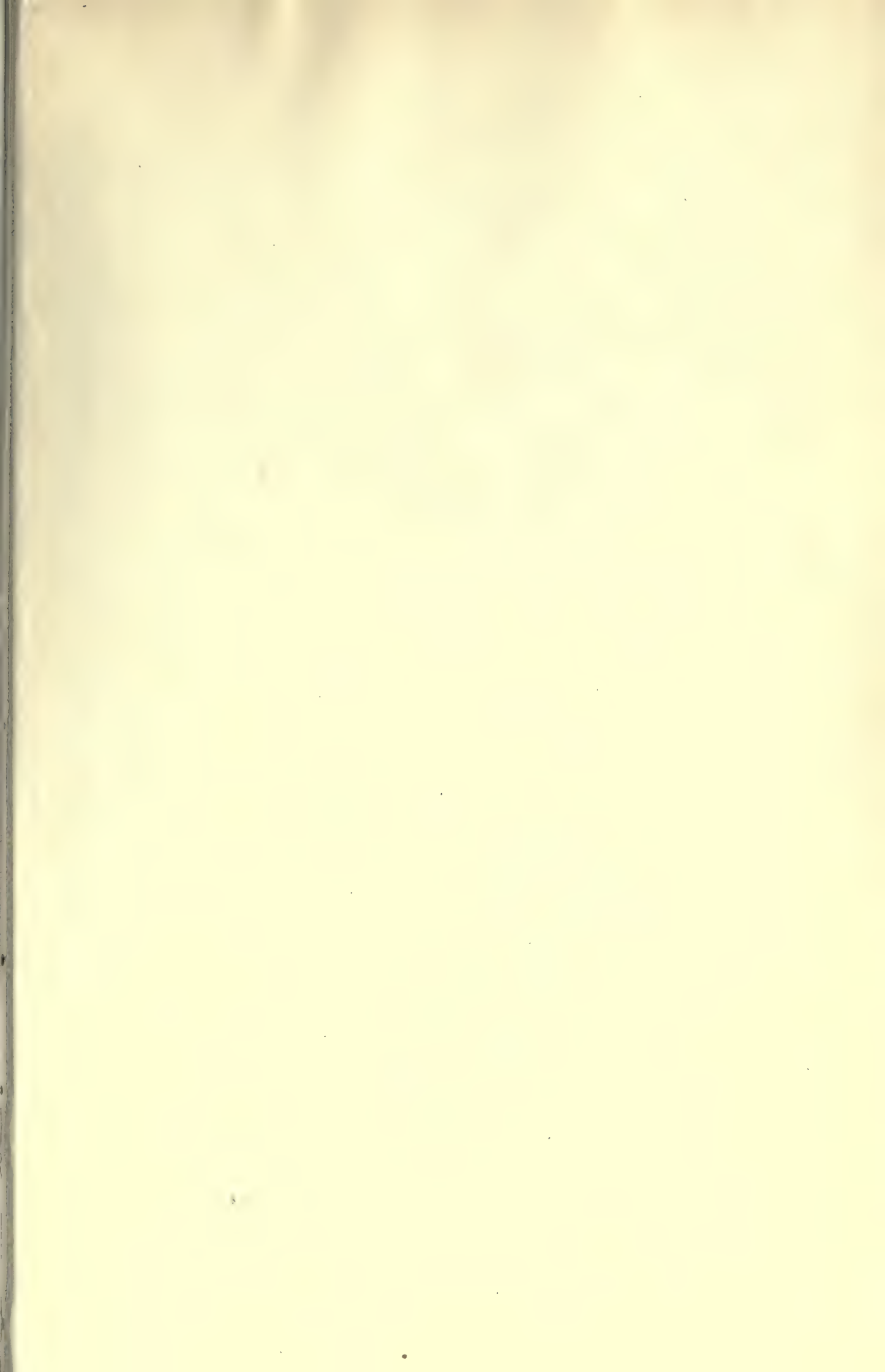
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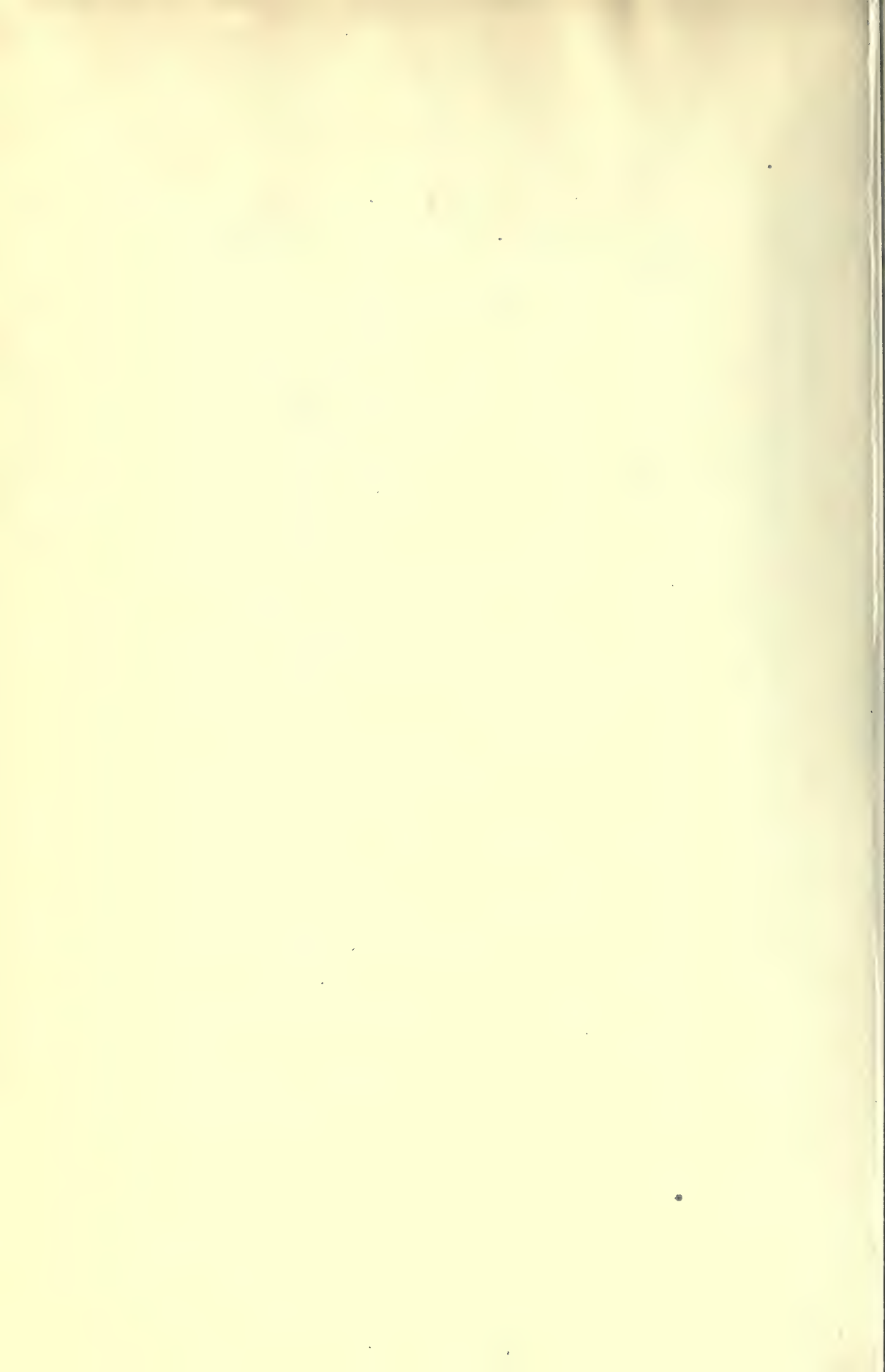
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